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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1995

Addendum

FIJI

[12 June 1996]

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Executive Summary

Fiji is a small island nation in the South Pacific with a multicultural, multiethnic and multireligious population.

Fiji ratified the United Nations Convention on the Rights of the Child in 1993 and the Government established a Coordinating Committee on Children to consider ways in which Fiji could incorporate the provisions of the Convention into its laws and procedures.

Information on the principles and provisions of the Convention is being gradually disseminated through the education system, television, radio programmes and activities organized by non-governmental organizations.

There are numerous legal provisions in Fiji which provide for the protection, care, health and social welfare of children in Fiji. While the legal provisions exist, constraints relating to the implementation of some of the legislation contribute to a few of the existing problems in relation to children in Fiji.

The Constitution of Fiji generally accords children the same rights and protection as all adult citizens although some problems have been identified within the Constitution particularly relating to children with Fiji mothers and foreign fathers.

Children in Fiji are granted through the Constitution freedom of expression, thought, conscience, religion, association, peaceful assembly, privacy and access to appropriate information. Various provisions in the law offer full protection against torture or other cruel, inhuman and degrading treatment or punishment. However, there is no legal aid system that is available to children who are in trouble with the law. There is no legal definition of the age at which children no longer need parental consent to receive certain health services or when they have a complete right to privacy and confidentiality. Criminal proceedings are often lacking in providing sufficient protection to children from exposure to continued abuse or violence.

Various statutes exist in Fiji which relate directly to the welfare of children and which are in line with the principles of the Convention on the Rights of the Child. A Family Law Act has been proposed and a Commission on the Court System in Fiji (Beattie Commission) has also made recommendations to address some of the existing weaknesses.

Constraints on assistance to children include the lack of reporting of child abuse as well as the lack of counselling facilities for child victims of abuse. A Children's Unit within the Department of Social Welfare has been approved. A Policy on Child Abuse for Fiji health institutions has been formulated to deal with these constraints.

Insufficient financing and staffing have been identified as constraints by the Department of Social Welfare in taking a more pro-active role in various aspects of child welfare in Fiji.

In relation to health, primary and preventative health services have been in operation in Fiji for many years. These services encourage parents to be responsible for their own and their children's health.

There are various projects being implemented by the Ministry of Health which impact directly on children's health. The Ministry of Health promotes and protects the health of pregnant and lactating women. Family planning services and information are widely available. Child immunization coverage in Fiji is well over 90 per cent. Health promotion and regular growth and development monitoring of children aged 0 to 5 are components of the Ministry of Health Maternal and Child Health Programme. Many local, regional and international agencies support the Ministry of Health in its efforts to improve the health of children in Fiji. Health indicators show good progress in child health over the years. However, malnutrition remains a definite problem in relation to children and this is one problem currently being addressed through the concerted efforts of Government, NGOs and international agencies.

While children in Fiji have access to as good a health system as is possible with the available resources, constraints exist in terms of finance, staffing, supplies and equipment, as well as the geographic characteristics of a small-island nation.

The provision of education in Fiji is a partnership between Government and non-government management authorities which run most of the primary and secondary schools. The Education Act defines the supervision and regulatory powers of the Department of Education and ensures that entry into schools is not restricted by a child's ethnicity or religion.

Education is not compulsory since compulsory education and free education are seen to go together and the cost of providing free education to all children is prohibitive. Tuition fee-free education is provided to all children in primary schools which cater mostly for ages 6 to 13. The aim is to eventually make education compulsory.

A number of privately operated schools provide pre-school education. Technical and vocational courses are available for secondary school students and school leavers. Government as well as religious and non-governmental organizations operate training institutions which offer a wide range of vocational and technical courses. Higher education is available to those who satisfy academic requirements and a range of scholarships are available for higher education.

Various programmes have been initiated or are ongoing for teacher training and upgrading, revision of curriculum and improvements to the quality of education. Education is a priority area for Government with about 20 per cent of government expenditure devoted to education. However, finance still remains a constraint along with the geographical dispersal of schools and the isolation of some communities.

Primary education is accessible to almost all children in Fiji, but secondary education is less accessible due to the higher costs involved and

the geographical distribution of schools. The present curriculum also is inadequate in meeting the needs of students of all academic capabilities.

Every child in Fiji has the right to leisure and to participate in cultural activities, games and sports in their free time and as part of their school programme. All children are encouraged to participate in cultural, artistic and religious activities and to learn their language along with the English language which is the medium of instruction in schools.

The Juvenile Act provides for the administration of juvenile justice and provides protection to children in conflict with the law. The Government and the judiciary are reviewing the execution of the Juveniles Act to ensure further that the special needs of child offenders are met. Special provisions exist to ensure maximum protection and well-being of children who are in custody.

There also is legislation to protect children from various forms of exploitation. However, in recent years there have been increasing reports of crimes against children. Initiatives are being taken to enable easier reporting of incidence of child abuse, better procedures for the presentation of evidence and more successful prosecutions.

Existing legislation prohibits drug abuse and sale of liquor to people under the age of 18 years. However, teenage alcohol abuse is commonplace in Fiji and drug abuse appears to be rising. The Department of Education and various NGOs have introduced abuse training programmes and counselling for senior secondary school students, individuals and families. Much more public education is needed on substance abuse.

The indigenous Fijian community in Fiji is generally regarded as disadvantaged economically. Statistics on school achievements, drop-out rates from schools and the prison population give some indication of the patterns of ethnic disadvantage. There are special provisions in the Constitution of Fiji to safeguard the rights of indigenous Fijians. Various affirmative action schemes are now being implemented to assist the ethnic Fijian community.

The ratification by Fiji of the Convention on the Rights of the Child indicates Fiji's commitment to the realization of its objectives. Most laws in Fiji are in harmony with the provisions of the Convention. It is expected that the various arms of the Government will work towards ensuring that various aspects of the Convention are taken into consideration in their policies and plans.

The focus of attention in Fiji, however, remains the family as the basic unit of society within which the needs of the child must be given due consideration.

Introduction

1. When Fiji people describe their society and cultures, a common theme is the importance of family. All of Fiji's ethnic communities value caring relationships among their wide networks of kin. Family events, social occasions, and religious festivals are commonly celebrated by large gatherings

of relatives, close and distant. Kinship virtually defines most rural communities, be they Fijian villages or Indian settlements. For many small children, the world beyond their own homes appears to consist of aunts, uncles, cousins, and grandparents. Language is an important aspect of family and social life in Fiji. Most children speak the local dialect of their traditional vernacular, and learn English at school, usually speaking two languages with ease and sometimes being fluent in three or four.

2. People often prefer to believe that the tight social fabric woven by family relationships is a social and economic safety net through which few people can fall into destitution, hard times, or abusive situations. Nevertheless, social conditions are changing and economic pressures are exacerbating the difficulties of some families. Expectations of women are changing quickly. Social problems once thought foreign - such as youth delinquency and drug abuse, sexual and physical abuse of children and women, homeless children, and escalating divorce rates - are now well apparent in Fiji. Increasingly, the Government is having to adopt some of the welfare functions of the family.

3. As Fiji's economy and society have changed over recent decades, many families have become less dependent on land for their livelihood and more dependent on cash. The Government is trying to stimulate the growth of all sectors of the economy, create employment and raise living standards, policies that may well accelerate this trend towards cash reliance. Children's lives change as their families' lifestyles, expectations, and spending behaviour are transformed. The most immediate effect is the amount of money that parents have and are willing to spend on their children. A second change is the amount of money the Government spends on social services that directly affect the well-being of children, in particular health, education, public housing, and social welfare.

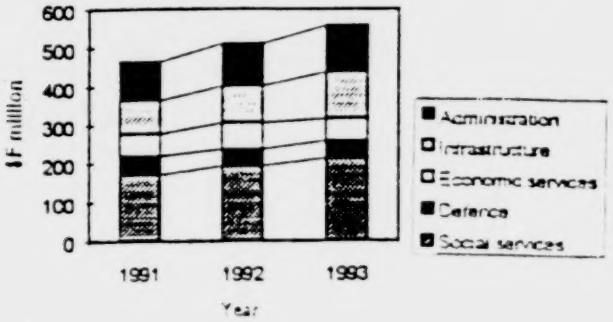
4. The continued role of the extended family in Fiji, especially in relation to children, was highlighted by the President, Ratu Sir Kamisese Mara, at the National Summit of the Family in December 1994. He said, "Here in Fiji, amongst all our communities, we are fortunate in that the extended family continues to be, although to a slightly lesser degree these days, a positive influence in the raising of young children and in providing social and family stability."

5. In September 1990, 71 Presidents, Prime Ministers and representatives from 155 member nations met at United Nations Headquarters in New York at the first World Summit for Children. Fiji was represented at this meeting by its Ambassador to the United Nations. The Summit's Declaration on the Survival, Protection and Development of Children stated that delegates had gathered together to "give every child a better future" and called upon all nations to draw up a National Plan of Action and make a commitment to the protection and care of children.

6. In March 1991 senior representatives from 13 nations in the Pacific met in Suva for the "Consultation on the Children of the Pacific", hosted by UNICEF. The Fiji representatives at this consultation recommended that a working group be established to analyse the situation of children and make recommendations for the future and the development of a National Plan of

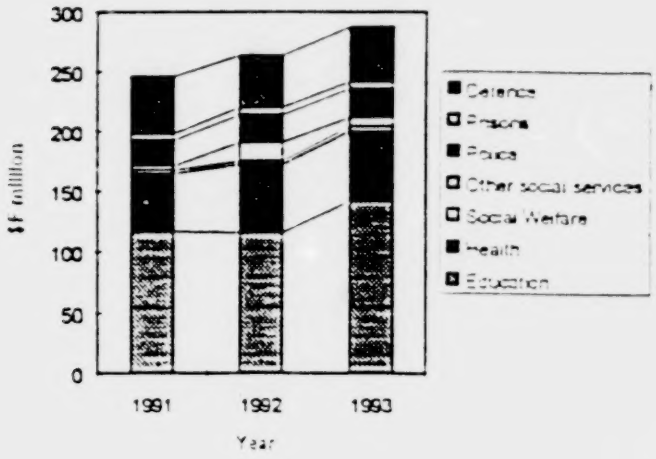
Action. Soon after, the National Children's Policy Committee was established in Fiji. This committee reviewed the status of children in Fiji and produced the National Policy, Strategy and Plan of Action for Children, which is annexed to this document. In June 1993, the Government endorsed this report as the basis for further work on issues relating to children. Fiji ratified the Convention on the Rights of the Child on 13 August 1993. The following chapters provide an account of our progress since improving the well-being of Fiji's children.

Fiji government expenditure by functional categories, 1991-1993



Source: Fiji Government budget reports.

Fiji government spending on social sector and security, 1991-1993



Source: Government budget reports.

I. GENERAL MEASURES OF IMPLEMENTATION

A. Measures taken in the past two years to harmonize national law and policy with the provisions of the Convention

7. The Commission of Inquiry into the Courts System of Fiji, which was commissioned in March 1993 and presented its report (the Beattie Report) in August 1994, recommended that present legislation relating to children be reviewed and that a Children's and Young Persons' Act be enacted to replace the Juveniles Act and create laws that are more children-specific.

8. The Family Court Committee was established in February 1995 to implement the recommendations of the Beattie Report. It will ensure that changes to legislation effectively protect and enhance the rights of the child and comply with the Convention on the Rights of the Child. Family Law is a priority topic for consideration by the Law Reform Commission in 1996.

9. Cabinet has approved the establishment of a Children's Unit within the Department of Social Welfare (of the Ministry of Health and Social Welfare), to coordinate work on child health and welfare. Government has identified staffing needs and there is an expectation of budget approval for 1996. The Department of Social Welfare has meanwhile begun the process of coordinating policies relating to children by linking up with other agencies on issues such as the physical and sexual abuse of children. The Department is also currently reviewing adoption procedures and legislation with a view to bringing into effect further care and protective measures for children.

10. In March 1995, the Department of Police established a Child Abuse Unit, following an initial training workshop for police officers. Some officers have been selected to serve in the unit; others are applying their new skills in their normal posts. The present temporary location for the Unit is at Police Headquarters in Suva.

11. The Ministry of Health has adopted the major and supporting goals of the World Declaration on the Survival, Protection and Development of Children and Plan of Action from the 1990 World Summit for Children. National goals include reducing the Infant Mortality Rate from 16 per 1,000 live births to 12 per 1,000 by the year 2000. The Ministry is strengthening its programmes to control the major causes of morbidity and mortality in children. Activities to date include:

(a) Training health workers in the control of diarrhoeal diseases, standard case management of acute respiratory infection, promotion of breastfeeding and the Baby Friendly Hospital Initiative, implementation of the Expanded Programme of Immunization, promotion of family planning and control of sexually transmitted diseases and HIV/AIDS;

(b) Expanding the Fiji programme of immunization to include hepatitis B vaccine;

(c) Fostering community participation in primary health care by training community health workers and conducting health education programmes;

(d) Drafting a Fiji code of marketing for breast-milk substitutes; and

(e) Processing legislation to allow importation of iodized salt only.

12. A Policy on Child Abuse for Fiji health institutions has been formulated and distributed. It states that the Ministry of Health will work closely with the Department of Social Welfare, the Police Department, and the Women's Crisis Centre (an NGO). A subcommittee representing these bodies already meets regularly to discuss mutual interests and case-studies. The main setback to the work of this Committee is the lack of specialists in the police force and Department of Social Welfare in the face of "general work" pressure.

13. The Government aims eventually to make primary school education compulsory for children aged 6 to 15 years. As an initial step towards this, the Ministry of Education is aiming to introduce compulsory education for this age-group in two education districts in 1996. Parliament endorsed this project in 1994.

14. Recent improvements to education services include:

(a) An increase in the primary school tuition fee-free grant to schools from $12 a year to $30 for each student in 1994;

(b) An increase in the number of civil-servant teachers' posts from 4,800 in 1993 to 4,921 in 1994 and 1995;

(c) The upgrading of the quality of teaching staff by requiring higher entry qualifications for teachers' colleges;

(d) In-service courses in school management for head teachers;

(e) In-service training for primary teachers in literacy teaching and classroom skills;

(f) Promotion of community support for education; and

(g) Installation of a management information system in the Ministry of Education.

15. The Coordinating Committee on Children expects all government ministries to re-examine their procedures and practices to ensure that they protect the rights of children in Fiji and comply with the Convention on the Rights of the Child.

16. Many of the issues relevant to the Convention on the Rights of the Child are included in the Declaration of the National Summit on the Family. This Declaration is being considered for adoption by the Government.

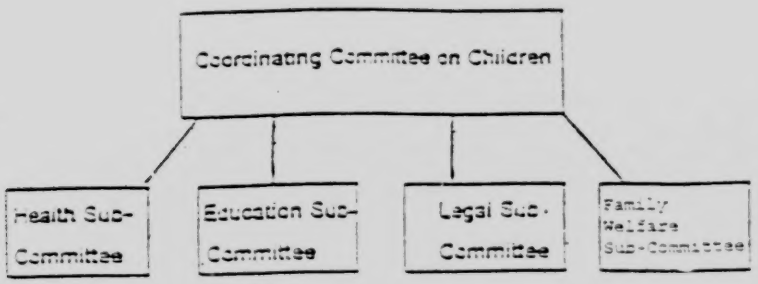
B. Strengthening measures for coordinating policies relating to children and for monitoring the implementation of the Convention

17. Cabinet established the Coordinating Committee on Children (CCC) in 1993, the same year Fiji ratified the Convention on the Rights of the Child. The Committee has a wide membership of people from various government ministries as well as from non-government organizations whose work relates to children. Members include representatives from the Ministry of Agriculture;

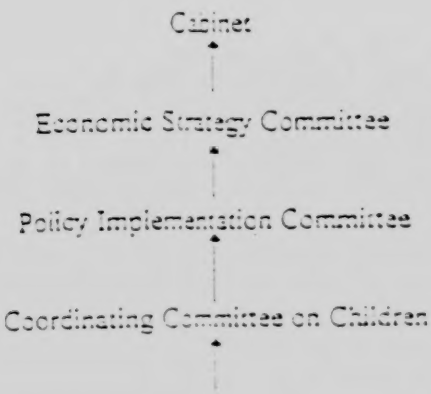
the Ministry of Education, Women, Culture, Science and Technology; the Ministry of Foreign Affairs; the Ministry of Health and Social Welfare; the Ministry of Housing, Urban Development and Environment; the Ministry of Regional Development and Multi-Ethnic Affairs; the Ministry of Youth, Employment Opportunities and Sports; the Public Service Commission; the Attorney-General's Office; the National Food and Nutrition Committee; the Ombudsman's Office; and representatives of the following NGOs: Save the Children Fund, Women's Crisis Centre, Fiji Council of Churches, Fiji Council of Social Services, Vision Fiji Committee, Fiji Red Cross Society. The task of the Committee is to consider ways in which Fiji can incorporate the provisions of the Convention into Fiji's laws and practices. This includes coordinating national efforts in matters relating to children, such as the ratification of the Convention on the Rights of the Child; following up recommendations of national reports on children; and coordinating the UNICEF programme of assistance to Fiji. The Central Planning Office acts as secretariat to the Committee and UNICEF provides technical assistance when required.

18. The Coordinating Committee has met regularly since June 1993 and has established four subcommittees to focus on children's issues: the Legal Subcommittee, Education Subcommittee, Health Subcommittee and Family Welfare Sub-Committee.

CCC Administrative Structure



Policy Recommendations Channels



C. Measures to make the principles and provisions of the Convention widely known to adults and children alike

19. The Legal Subcommittee has translated the Convention into simple language, and the Education Subcommittee and the Ministry of Education are using this simplified version to inform teachers, parents and students about the rights of children and other aspects of the Convention. This information will be included in the next edition of the Ministry's gazette to school managements and teachers, due to be distributed in September 1995; it will be incorporated into advisory meetings with teachers, parents and communities; it will be distributed in the form of information pamphlets to students; and it will be the subject of radio broadcasts to schools and the general public.

20. The Coordinating Committee on Children further intends to use children's television and radio programmes to disseminate information to children and young people about the Convention. UNICEF is airing television spots that use the words of children to briefly explain various articles of the Convention. Furthermore, Fiji Television is making a documentary about the views of Fiji children on the Convention. This documentary will be used to raise children's awareness of these issues and to encourage dialogue about matters they find important.

21. The Ministry of Health has translated a booklet entitled "Facts of Life" into Fijian and distributed both the Fijian and English versions widely. A Hindi version will also soon be distributed. The booklet presents basic information about the health and growth of children and the services that are available in Fiji.

D. Measures taken to draw the whole social community into participation in the implementation of the Convention

22. There have been attempts to initiate dialogue among children on the Convention by some NGOs. For example, the Fiji Council of Social Services has established a National Forum on Children's Development.

23. The Fiji Television documentary mentioned above will be screened on national television and more widely throughout the country via video, to stimulate public interest about children's needs and rights and to encourage the public to become involved in implementing the various aspects of the Convention.

E. International coordination and cooperation

24. Fiji has contributed to most major regional and international meetings concerned with social and economic development, and the firm national resolve to improve social and economic conditions is apparent in the agreements and commitments the Government has thereby entered into. These agreements include the 33rd South Pacific Conference Resolution on the State of Pacific Children, the Port Vila Declaration on Population and Development, the Pacific Region Platform of Action and the Noumea Declaration on Women, the Suva Declaration on Sustainable Human Development in the Pacific, the World Summit for Children Declaration on the Survival, Protection and Development of Children, the

International Conference on Population and Development Cairo Programme of Action, and the World Summit for Social Development Copenhagen Programme of Action.

II. DEFINITION OF THE CHILD

25. There are provisions in the Fiji Constitution that suggest that a person is of adult status once he or she attains the age of 21 years. Under section 49, for example, a Fiji citizen becomes eligible to vote at 21 years of age.

26. In practice, however, the age of legal responsibility in Fiji is much younger than 21 years. Under criminal proceedings a person who offends is treated as an adult once they reach the age of 17 years. The Juveniles Act, which is a specific law dealing with children who offend or are in need of care, provides that all people who offend under the age of 17 are regarded as "juveniles" and are dealt with in juvenile courts.

27. Under the Juveniles Act, a child means any person who has not attained the age of 14 years. A juvenile is defined as a person who has not attained the age of 17 years. The definition of a juvenile includes a child and a young person.

28. Many of the laws of Fiji use more specific age definitions to protect and enfranchise the child. For example:

(a) The Juveniles Act (sect. 29) states that no child under the age of 10 years can be guilty of any offence. A child between 10 and 12 can be found guilty only if it can be shown that the child knows the crime he or she committed was wrong. Children under 14 cannot be placed in prison, except when they are hardened juvenile criminals;

(b) The Penal Code (sect. 25) states that the sentence of death shall not be pronounced on a person under the age of 18 years;

(c) The Marriage Act (sect. 12) states that the minimum age for marriage is 16 years for women and 18 years for men. However, consent is needed from the father if the person is under 21 years of age. If he has died, the mother or a magistrate can give consent;

(d) Under the Wills Act, a person can make a will once they are 18 years;

(e) The age of capacity to contract or to acquire and transfer land is not specifically legislated; in practice the English Minors Act, which stipulates the age as 18 years, is followed;

(f) Under the Liquor Act, it is illegal to sell or supply alcohol to people under the age of 18 years;

(g) The Employment Act provides important protection for children because union agreements with employers generally only cover workers aged 17 or older. The Act defines children as under 15 and does not permit the

employment of children under the age of 12. Section 59 states that children under 12 years are not allowed to work in any capacity whatsoever, and provides protection for children from long hours, night work and hard or heavy work. Section 60 allows that a child can be employed only on a daily basis for a daily wage and that the child must return each night to the residence of the parents or guardian. Section 64 states that a child shall not be employed for more than six hours a day;

(h) A young person must be at least 18 to be recruited into the army.

29. There are specific laws as to criminal offences against children. Under the Juveniles Act (sect. 57) it is an offence to ill-treat, neglect or abandon a child, a child being under 17 years.

30. In regard to health services, there is an inadequate legal definition of the age at which children need parental consent for out-patient care. At present, Ministry of Health policy is that children aged 17 or less who attend hospital out-patient departments without their parents are seen by the attending health service provider and treatment is administered without parental consent. There is no legislative provision to determine at what age parental consent is not required for contraceptive use. While Fiji Law defines a child as being 17 years or younger, the child-bearing age begins at age 14 and continues to age 44. Legislative provision for contraceptive use in the 14-17 age group needs to be defined.

31. There is no age prescribed for a child to give testimony in court and no requirement as to when parental consent does or does not apply. Under the Juveniles Act (sect. 10) a child can give evidence and can give sworn evidence if he or she understands the nature of an oath. If a child does not understand the oath but has sufficient intelligence and understands the duty of speaking the truth, such evidence is admissible but has a requirement of corroboration. A child in this circumstance is described as "any child of tender years" and this section applies to a child being called as a witness in either criminal or civil proceedings.

III. GENERAL PRINCIPLES

A. Non-discrimination

1. Legal context

32. The Constitution of Fiji accords children the same rights and protections as all adult citizens of Fiji regardless of their race, sex, place of origin, political opinion, colour, religion or creed. These rights include:

(a) The right to life, liberty, security and the protection of the law;

(b) Freedom of conscience, speech and association; and

(c) Protection of property, privacy and from deprivation.

33. The Constitution (chap. 4, sect. 25) permits citizenship to a child born overseas whose father is a Fijian citizen but whose mother is not, and to a child born illegitimately to a woman with Fijian citizenship. The reason for this provision is that the cultural ideal in Fiji communities is that the patrilineal line is given most recognition. Similarly, section 26 of the Constitution does not allow a non-Fijian spouse of a Fijian citizen woman the automatic right to Fijian citizenship. However, a child whose father is not a citizen of Fiji but whose mother is, is entitled to reside in Fiji until he or she turns 21 years of age. At that time, under the provisions of section 26 (2) (b) of the Constitution, he or she may apply to become a citizen of Fiji.

34. Under the Education Act, entry into any school cannot be refused on the basis of race, colour, creed or religion. The only legal restriction is on the minimum and maximum ages of entry to primary school, which are 5½ and 15 years respectively.

35. In regard to health services, the Fiji Constitution states that it is the right of every person of the Republic of Fiji, irrespective of race, colour, creed, financial circumstance or poverty, to have access to high quality health services. The principal function of these services is to promote, protect, maintain, restore and improve the health and well-being of the people of Fiji as much as possible, for good health is a significant element in quality of life.

2. Implementation

36. Public services and infrastructure are less developed in the remote rural areas and outer islands of Fiji, and children in these areas are to that extent disadvantaged. Fiji's many small islands and rugged topography make access to quality health care particularly difficult. The Ministry of Health's goal is to station a nurse at every inhabited island but the Ministry is constrained by its limited staffing resources. There is nevertheless a system in place to evacuate emergency cases from outlying islands and remote areas. Similarly, school attendance is generally lower where children must travel long distances and by various modes of transport but, overall, poor attendance is related more to low parental income.

37. There is no national ruling as to whether a student can continue at secondary school after marriage, but their exclusion could be seen as discriminatory. It does not often happen that secondary students marry but when it occurs, their status as students is decided upon according to school policy. Tertiary students who marry may continue their course; nursing courses, however, are restricted to single students. Pregnant students are required to take at least 12 months' leave before they can continue their studies and a girl who becomes pregnant while at school usually is required to leave and later join another school if she wants to continue her studies.

3. Future implementation

38. On 11 September 1995, the Coordinating Committee on Children made a submission to Fiji's Constitutional Review Commission on those areas of the 1990 Fiji Constitution which affect the rights of children and are

inconsistent with the Convention on the Rights of the Child. The submission addressed issues of citizenship, residency and domicile, identity, and the definition of a child. The Commission was provided with a copy of the Convention on the Rights of the Child and was advised of Fiji's position of having ratified the Convention without reservations. The Commission was asked to take into account the Convention in preparing its report on the Constitution and, in particular, to be mindful of the children of Fiji. The Constitutional Review Commission will report to the Government of Fiji in 1996.

B. The best interests of the child

1. Legal context

39. There is no legal definition in Fiji as to what constitutes the best interest of the child. Although the term "the best interest of the child" stems from legislation dealing with family law there is no legal definition attached to it. There are relevant court rulings, however, particularly relating to domestic matters such as child custody, access and maintenance proceedings. The best interest of the child is a paramount consideration for a court of law in respect of the custody, guardianship, welfare, and advancement in education of children of a marriage which has failed, and whenever the court must decide who will have custody of a child.

40. The best interests of the child is embodied in section 85-(1) (a) of the Matrimonial Causes Act, which reads:

> "85-(1) In proceedings in which application has been made with respect to the custody, guardianship, welfare, advancement on education of children of a marriage:
>
> "(a) the court shall regard the interest of the children as the paramount consideration ..."

41. The factors that courts in Fiji consider in determining the best interest of a child and deciding on custody are:

(a) Attachments and relationships and the effects of severing the child's relationship with either parent;

(b) The attitudes of both parents (such as their consistency or inconsistency, aggressiveness or calmness, warmth or rejection towards the child);

(c) Arrangements for care and supervision, in particular the duration and frequency of care offered at the present time;

(d) Each parent's conduct, in particular positive and negative conduct that affects the care of the child[ren];

(e) Communications between each parent and the child, and in general;

(f) Facilities for schooling and for other educational, religious and recreational needs that are offered by each parent and are required by the child;

(g) The financial resources of both parents and how they are used;

(h) The future plans of both parents and their relevance to the child;

(i) The physical, mental and emotional health of each parent and the child[ren];

(j) The home environment - its stability, safety, routines, etc. - that is offered by each parent;

(k) The opinions of others, such as teachers, doctors and psychologists, who are involved with the child or either parent;

(l) The parenting skills, such as experience, competence, motivation, willingness, ability, and consistency, of both parents;

(m) The values and beliefs of both parents and how they do, or may, affect the child; and

(n) The child's wishes, as told by the child.

The above factors are not exhaustive and others may be considered depending on the circumstances of the case and the welfare and interest of the particular child. The court will award custody in a way that will ensure that the child is nurtured and brought up similarly to children who have well-settled and stable family backgrounds.

42. Under the Juveniles Act, the Department of Social Welfare is charged with protecting the child's best interests, specifically by ensuring the safety, welfare and development of each child, whatever the circumstance.

43. The Penal Code (sect. 209, Responsibility of a person who has charge of another) states that it is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessities of life, whether the charge is undertaken under a contract or is imposed by law, or arises by reason of any act, whether lawful or unlawful, for the person who has such charge to provide for the other person the necessaries of life; and he shall be deemed to have caused the consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

44. The Penal Code (sect. 210, Duty of head of family) states that it is the duty of every person who, as head of a family, has charge of a child under 14 years, being a member of his household, to provide the necessaries of life for such a child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

2. Implementation

45. Practical constraints on ensuring that the best interests of the child are met in regard to health, education, and welfare include:

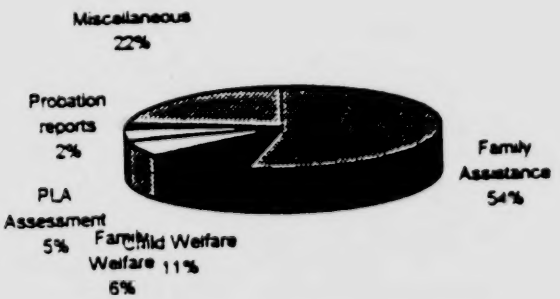
(a) A lack of government and NGO resources in terms of finances, staffing, equipment and supplies;

(b) The relative inaccessibility of health care and other public services in remote parts of Fiji; and

(c) Public ignorance about the legal rights of children.

46. The Department of Social Welfare has a wide generic function which not only includes child welfare and other mainstream social work areas but also the running of the social security system (distribution of the Family Assistance allowance) and the Poverty Alleviation Project (providing housing and income generation for poorer members of society). However, the Department was allocated only 0.7% per cent of the total government operating expenditure for 1995. In view of the increasing incidence of offences against children, there is a strong case for increasing resources for social welfare in general, and for expanding child welfare services in particular. Child welfare, which represented 7 per cent of cases dealt with by the Department in 1991, increased to 11 per cent in 1994 and continues to grow. The Department of Social Welfare is increasingly constrained both financially and logistically from developing the Child Welfare Unit, and from offering or funding specialist training to Welfare Officers who could specifically oversee the "best interests of a child".

Cases seen by the Department of Social Welfare, 1994



Source: Department of Social Welfare, 1994.

47. There is no provision in the Department of Social Welfare or any other agencies in Fiji to monitor that the custodial parent is actually ensuring the

welfare of the child. This monitoring should consider whether the child is being nurtured with all the natural love and affection, the state of the child's health and how regularly he or she receives medical check-ups; how the child is progressing at school or is being fed and clothed; and so on. Nor is there any child psychologist in Fiji to help assess the problems and needs for children's development.

48. Even though the best interests of the child include their education, the high cost of schooling when compared to the average wage earned means that some children and families cannot avail themselves of the full education system.

3. Future implementation

49. The provisions of the Juveniles Act have not been fully implemented in the caring sense that the Act intended. Steps have been taken through the Family Law Committee to review the execution of the Act to ensure that the actions of the police, the courts and social welfare agencies reflect the Act's provisions and meet children's special needs.

C. The right to life, survival and development

1. Legal context

50. The Fiji Penal Code (sects. 205 and 234, which refer to infanticides and surgical operations respectively) disallows abortion on demand. Section 205, Infanticide, states "Where a woman by any wilful act or omission causes the death of her child being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for the provision of this section the offence would have amounted to murder, she shall be guilty of felony, to wit, infanticide, and may for such offence be dealt with and punished as if she had been guilty of manslaughter of the child". Section 234, Surgical operations, states "A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case".

51. The grounds for identifying a child who is in need of care, protection or control are set out in section 40 of the Juveniles Act. Under section 55, it is deemed an offence to assault, ill-treat, neglect, abandon, or expose a juvenile to suffering or injury to health.

52. The Penal Code has a number of offences designed to safeguard and protect children, including offences of abduction, defilement, and infanticide. Further protection is provided by increasing the sentences which may be imposed by a court where the offence is against a child. For example, defilement of a girl aged between 13 and 15 years carries a maximum sentence of 5 years while defilement of a child under 13 years carries a maximum

sentence of life imprisonment. The Penal Code defines Defilement as carnal knowledge (sexual intercourse). The girl's consent provides no defence.

53. Under the Education Act (sect. 3, part II), the Ministry of Education has the responsibility to educate pupils according to the wishes of their parents.

2. Implementation

54. The Ministry of Health has strict policies on abortion but these do not apply to doctors who are not employed by the Ministry. Persons who perform abortions who are not medically qualified are liable to criminal prosecution. However, the law allows abortions on grounds of "reasonableness" and a liberal interpretation of the meaning of section 234 and, in view of these exceptions and the court's interpretations of the legislation, some private doctors do perform abortions without following the same policies as the Ministry of Health.

55. The incidence of crimes against children in Fiji is impossible to determine for many cases are never reported. If victims do report abuse they variously go to the police, the hospital, medical practitioners, religious leaders, or organizations such as the Women's Crisis Centre. Even fewer of these cases proceed to court. Case records are only reported by the police, the courts, and the Women's Crisis Centre but there is no way of knowing what the gaps or overlaps are between these reports or what proportion of all cases they represent. A further difficulty in assessing the prevalence of these crimes is that different forms of abuse are aggregated differently by each agency.

Reported cases of child abuse, by agency, 1990-1994

(a) Police

	1990	1991	1992	1993	1994
Defilement	76	53	55	7[illegible]	76
Indecent assault					25
Other abuse					7

(b) Court records

	1990	1991	1992	1993	1994
Defilement, incest, indecent assault, other abuse	36	40	66	36	26
Infanticide	3	2	9	1	3

(c) Women's Crisis Centre

	1990	1991	1992	1993	1994
Child abuse	0	11	8	14	14

(d) Department of Social Welfare

	1990	1991	1992	1993	1994	1995
Child abuse	8	7	11	15	15	22

(e) Colonial War Memorial Hospital

	1990	1991	1992	1993	1994	1995
Child abuse	2	3	3	4	4	20*

* As of June 1995.

56. Because infant deaths receive scrutiny, cases of infanticide have a fair chance of being discovered. But while the reported incidence of crimes such as incest and defilement is low, these statistics have no necessary bearing on the true situation. Anecdotal evidence suggests such crimes against children are increasing. The Legal Subcommittee of the Coordinating Committee on Children is setting up a system for these agencies to better coordinate their reporting. Mandatory reporting of crimes against children by all agencies, including private doctors and churches, would be the next step forward.

57. Fiji has in place health programmes that address diseases affecting pregnant women and children under five years. Many of these programmes have had technical and financial support from United Nations agencies, namely UNICEF, WHO, UNFPA and UNDP. These programmes include:

(a) The use of low-cost, high-impact health technologies such as immunization against diseases and oral rehydration therapy for management of diarrhoeal diseases;

(b) Exclusive breast-feeding for four months;

(c) Growth development monitoring;

(d) The Expanded Programme of Immunization;

(e) Control of diarrhoeal disease;

(f) Standard case management of acute respiratory infection;

(g) Antenatal and postnatal care for mothers, family planning services and screening for cervical and breast cancer;

(h) HIV/AIDS/sexually transmitted diseases;

(i) Environmental health;

(j) Non-communicable Disease Programme.

58. The right to development includes education and parents have the right to select the school of their choice given their financial resources and geographical location. While curricula are set by the Ministry of Education, parents can exercise their influence as to the inclusion of some subjects such as religion, language, culture and vocational subjects.

3. Constraints

59. The main difficulties in improving the health of children are the shortage of supplies, namely drugs, syringes and needles, and refrigerators to store and transport vaccines; the cost of transporting supplies to all children, or children to health centres; and the shortage of specialized personnel, in particular paediatricians, in main referral hospitals.

60. In respect of social welfare, the two main impediments appear to be the culturally based misconceptions surrounding the notion of children's "rights" and the belief that expenditure on child welfare is not "productive" investment. Desirable goals for the future are:

(a) More public awareness and education on the Convention;

(b) Allocation of adequate resources for child protection and development programmes; and

(c) Legislative measures taken to ensure that the best interests of the child are always protected.

61. Failure of children to attend school is related to the costs of education, and to the values and attitudes of different cultural groups. The Ministry of Education is increasing the fee-free grants for primary school pupils and fostering community partnership in the running of schools.

D. Respect for the views of the child

1. Legal context

62. The views of a child in Fiji are respected in that he or she is entitled to give evidence in court. The law in respect of children is that a child's evidence must be corroborated if unsworn and must be subject to a corroboration warning if sworn. Section 10 of the Juveniles Act, Cap 56, provides that:

> "Where in any proceedings against any person for any offence or in any civil proceedings any child of tender years called as a witness does not in the opinion of the court understand the nature of the oath, the evidence may proceed not on oath, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and to understand the duty of speaking the truth; and the evidence though not given on oath but otherwise taken and reduced into writing so as to comply with any law in force for the time being, shall be deemed to be a deposition within the meaning of any law so in force; provided that where evidence is admitted by virtue of this section on behalf of the prosecution the accused shall not be liable to be convicted of the offence unless the evidence be corroborated."

63. In custody disputes, children have the right to express their own wishes although the child's best interest is of paramount concern to the court. The Domestic Courts consider that children aged 12 years and older are competent to give evidence.

64. Within the secondary school system, students have a voice through the student representatives as prefects and through the student council. Student councils provide opportunities for students to express their grievances and opinions on specific issues affecting their schooling. The high level of student participation reflects the proactive role taken by some schools.

65. The Ministry of Education restricts classroom teachers from hitting or caning a student. The Ministry's policy is that a head teacher may use corporal punishment when a child misbehaves, but students are not to receive corporal punishment for poor academic performance. Any time a head teacher institutes corporal punishment it must be recorded. A female student is not to receive corporal punishment without the attendance of a female staff member.

2. Implementation

66. Physical punishment is widely practised and culturally acceptable within most Fiji families as a means of disciplining children, but it is apparent that this is also a common way to impose physical abuse on them. There is general agreement that parents and teachers can inflict physical punishment, and they often do so. As a result, it does not come easily to those in authority to listen to or to respect the views of children. Serious consideration needs to be given in Fiji to the issue of physical violence against children.

67. Corporal punishment of children in institutional care is not permitted but it is occasionally practised. Regulations under the Juveniles Act (sect. 16) specify the methods that may be used by a headmaster or staff member to discipline juveniles. These include forfeiture of rewards and privileges and the separation of juveniles in exceptional cases and under certain conditions. Corporal punishment by its exclusion is not permitted; however in practice it sometimes occurs. Given the low staffing levels in these institutions, it is difficult to switch the emphasis towards rewarding good behaviour and away from punishing bad behaviour.

68. Teacher training colleges and the University of the South Pacific are including in their curricula courses on behaviour management and positive guidance techniques as an alternative to physical punishment.

3. Future implementation

69. The Department of Social Welfare has a policy to ensure that children in institutional care are not physically punished for any reason.

IV. CIVIL RIGHTS AND FREEDOMS

A. Name and nationality

1. Legal context

70. Children born in Fiji whose father or mother is a Fiji citizen automatically become Fiji citizens. A child born outside of Fiji automatically becomes a Fiji citizen only if the father is a Fiji citizen. If only the child's mother is a Fiji citizen then the child has no automatic right to citizenship and must apply to be registered as a citizen at or after the age of 21 years. The exception to this rule is if the child is born out of wedlock to a Fijian mother. Anyone born outside Fiji but whose grandparents are Fiji citizens may apply to be registered as a citizen once they turn 21 years. The same situation applies to legally adopted children of Fiji citizens and non-Fijian women married to Fiji citizens.

71. Where a child has dual citizenship (one being Fijian), the Fiji Constitution (sect. 28) stipulates that a single choice of citizenship must be declared within 12 months of his or her turning 21 years.

72. A commonly mooted issue is that all citizens of Fiji should have a common name. Children are classified on all official documents, including passports, by their racial identity. The question of ethnicity is crucial in Fiji, particularly for Fijian children, because it relates to ownership of native land and, through affirmative action, to access to scholarships and employment in the civil service. It therefore is unlikely that adoption of a common name would succeed in creating a common national identity.

73. The policy relating to personal names is that the child's names must be registered. Name changes can be made by deed poll once they become an adult. Alias names are sometimes used in Fiji although this is not a common practice.

2. Implementation

74. An adult must apply for a child's birth certificate, a system that seems to work quite satisfactorily.

75. Registration in the *Vola ni Kawa Bula* (the genealogical register of Fijian owners of native land) is possible when both parents or the father is Fijian. Where children are born out of wedlock the child's mother is responsible for placing the child's name under her *mataqali* (family line). Thus the child is registered on the Fijian mother's line if the father's line does not appear on the birth certificate. Registration in the *Vola ni Kawa Bula* brings the following rights: the right to own land, as all native land is held in trust; the right to stand for a Fijian seat in Parliament; the right to receive scholarships for Fijian children; and special preferential treatment, such as for loans at some banks.

76. Children born out of wedlock are only entitled to their father's name if that father's name appears on the birth certificate, but there is no bar in practice to using any name.

B. Preservation of identity

1. Legal context

77. All people of Fiji are accorded respect and the right to live harmoniously with due deference to their customs and traditional way of life. The protection of cultural identity is ensured to all disadvantaged groups by allowing for laws or programmes to address such disadvantage, including disadvantage based on race, sex, place of origin, political opinions, colour, religion, or creed.

78. The Fiji Constitution (sect. 156) states that a child can only be classified as a Fijian or Indian through its father's line. A child born to a Fijian or Indian mother and a father of a different race cannot be identified ethnically with their mother unless he or she is illegitimate and the father's identity is not known.

79. Indigenous Fijian children become members in their father's *mataqali* (clan), a birth right that is confirmed by their registration in the *Vola ni Kawa Bula*. Generally, if the child's father is not an indigenous Fijian the child loses this right, except if the father is unknown and the child is registered under the mother's name. However, it is the *mataqali* that has the final decision as to who will be included in their name. Although the child may thereby lose his or her inheritance of the father's property, the child can gain access to land rights through the mother's family.

2. Implementation

80. The preservation of cultural identity is important in Fiji's schools. In practice, most schools are culturally mixed, with the mix of ethnicity reflecting the local population distribution. Children are encouraged to respect each others' cultures.

81. The Ministry of Education actively supports the teaching of vernacular languages, including those of minority groups, and provides special grants so that school managements can hire vernacular language teachers. In most rural schools, children learn in their vernacular language (usually Fijian or Hindi) for the first two years. Where the school population is culturally diverse, particularly in Fiji's towns, English is the medium of education from Class 1. While English is the medium of instruction in all schools from Class 3 onwards, children have opportunities to learn other languages, including their own.

82. The multiracial nature of primary schools is reflected in cross-cultural programmes for language and culture, and the staffing of schools is being modified to reflect Fiji's multiracial population.

C. Freedom of expression

1. Legal context

83. The Fiji Constitution (sect. 4) guarantees freedom of conscience, of expression, and of assembly and association. The right of children in Fiji to express their views and ideas was again confirmed when the Fiji Government ratified the Convention on the Rights of the Child.

84. In custody matters, children can express their preference as to which parent they want to live with, although the court makes the final decision as to what is in the best interests of the child.

85. Similar legal provisions apply as were discussed under Respect for the views of the child.

2. Implementation

86. Children in Fiji express their views through their annual school magazines, which nearly all secondary schools and some primary schools publish. Schools also conduct drama, art, and music festivals and school debates. There are numerous public essay competitions where children are invited to express their opinions. Recent topics have been the environment, World Teachers' Day, World Food Day and Arbour Day.

87. There are regular radio programmes for children where children express their opinions and present their songs and poems. There is, for example, a daily children's session on the Fijian programme. Ministry of Education cross-cultural programmes are aired each week to encourage language learning through songs, drama and poetry, some penned by children.

88. Respect for authority and culturally defined standards of correct conduct restrict children from expressing themselves when they are in the company of adults and visitors. Children in Fiji are therefore not as outspoken as in other cultures, although this is changing with increasing cross-cultural contact, particularly with Western cultures.

D. Access to appropriate information

1. Legal context

89. The press in Fiji is free although limited by laws on obscenity, offending religious feelings and defamation of character. In this way, children are partly protected from exposure to inappropriate information, especially pornography, sexual explicitness and violence. A Censorship Board (administered by a representative of the Attorney-General) censors offensive films and videos and prohibits under-age viewing of restricted movies. While the Censorship Board has no control over publications, immigration officials confiscate any pornographic materials they find.

90. Children have wide access to information about social and cultural issues through their schools, public libraries and the media.

91. Where a child is a victim of abuse, he or she can receive counselling from the Department of Social Welfare or organizations such as the Women's Crisis Centre about their rights, their protection, and the legal process they may go through.

2. Implementation

92. As key socialization agents for children, television, video and movies require close monitoring and parental control. Widespread and ongoing concern in this area has only partially regulated television programmes, with violent PG-rated movies and other material unsuitable for children sometimes aired at prime viewing times. Parents need to be involved more in choosing the programmes that children watch. Video viewing poses a larger threat because it is largely unregulated. Moreover, while under-age viewing of restricted movies is banned, age limits are not enforced. Media-Watch, a Fiji NGO, regularly reports on this problem.

93. In practice, there is no legal aid system that is available to children who are in trouble with the law. The Beattie Inquiry made several recommendations in this respect, in particular to provide legal aid and facilities for counselling and family reconciliation.

E. Freedom of thought, conscience and religion

1. Legal context

94. The Constitution of Fiji upholds the right of the people of Fiji to exercise freedom of thought and religious belief. Most children encounter religion in their early years through their families, being integrated into the religious behaviour of their community through family prayers and community functions.

95. The 1986 census records the three principal faiths in Fiji are Christian (53 per cent) Hindu (38 per cent) and Muslim (8 per cent), with less than 0.5 per cent of the population not reporting a religion.

96. Religious organizations operate many of the schools in Fiji, and schools conduct religious instruction according to their particular affiliation. No child can be excluded, however, from enrolling at a school because of his or her religious belief or creed, and religious instruction is not compulsory. The decision to take religious instruction rests with individual students and their parents.

2. Implementation

97. Most Fiji children grow up in households where religion is actively practised, but all major faiths report that children are moving away from formal religious organizations and even from religious celebrations in the home, when given the choice. Some religious leaders and parents are concerned about this and are looking for ways to encourage children's participation in religious activities.

98. Some groups are trying to make their religious practices more attractive to children by providing more creative education programmes, by modernizing religious music and rites, and by holding special social gatherings for young people. Some involve themselves in the social life of communities and in sports and recreational activities for children. There is some enthusiasm for reintroducing religious teachings into school curricula.

F. Freedom of association and of peaceful assembly

1. Legal context

99. The Fiji Constitution (sect. 14) expressly permits freedom of assembly and association including the right to belong to trade unions or other associations to protect one's interests. Limits of course are placed to the extent of competing interests of defence, public safety, health, morality and order.

2. Implementation

100. Many children in Fiji belong to sports organizations and associations such as guides and sea and land scouts and other clubs. Schools, sporting organizations and voluntary organizations are also active in organizing cultural, sporting and religious activities for young people, often during school holidays. Children's recreational organizations rarely have an independent source of income other than support given by parents and local sponsors and this undoubtedly restricts the range of activities available to young people in Fiji.

G. Protection of privacy

1. Legal context

101. The Fiji Constitution (sect. 10) protects persons from their person or property being searched, except when their behaviour threatens national defence, public safety, and other persons' enjoyment of their freedoms.

102. Juveniles who are suspected of a criminal offence are entitled to special protection under the Police Force Handling Orders. Court proceedings for juveniles are held in camera. Victims of sexual abuse also must have their evidence heard in camera. Children's names and identities are protected in every case. The fingerprints or photographs of a child in custody cannot be taken unless ordered by a magistrate. The Juveniles Act extends this protection to cover children who give evidence or appear in court for any reason, by prohibiting newspapers and radio stations from reporting any information that identifies them.

103. The legal protection of a young person's right to privacy and confidentiality about their health, however, is not well developed. There is no legal definition of the age up until when children need parental consent to receive certain health services or when they have a complete right to privacy and confidentiality, such as in obtaining drugs such as contraceptives and antibiotics, and in seeking treatment for sexually transmitted diseases.

2. Implementation

104. Fiji families generally respect the right of their children to some privacy, especially once they reach their teenage years. Legislative provision must address not only the parent's rights if the child is under age, but also protect the child's right to privacy and confidentiality.

105. Medical information about all patients is confidential but this confidentiality may in practice be breached when a person has a disease that is a public health risk, such as tuberculosis or a sexually transmitted disease (STD), and their contacts must be traced. Some young people are punished by their parents or schools when they are known to be infected with STDs, a risk that undoubtedly inhibits some from seeking treatment.

H. The right not to be subjected to torture or other cruel, inhuman and degrading treatment or punishment

1. Legal context

106. The Fiji Constitution (sect. 8) provides that "no person shall be subjected to torture or to inhuman or degrading punishment or other treatment". Specific forms of protection are incorporated in several provisions of the Penal Code. For example:

Section 161 protects females from detention in brothels or elsewhere;

Section 162 protects minors from being sold for immoral purposes;

Sections 16 and 167 deal with males and females living off the earnings of prostitution; and

Sections 178 and 179 protect children who are the victims of incest.

2. Implementation

107. Some criminal proceedings offer scant protection to children from exposure to continued abuse or violence. Bail conditions are often not applied, or, if they are, there is no enforcement. Children need better protection in these circumstances.

108. Child witnesses sometimes need protection in court from intimidation by the accused. In 1993 an application to screen a child witness based on common law was successful for the first time in the Suva Magistrates Court. The same application was also allowed in another alleged child abuse case. Both these cases are still pending, however, and the decision to screen is still to be confirmed by the High Court. The practice of screening children has been allowed in other jurisdictions (in Australia, England and Wales) without specific legislative provision. To clear the area of uncertainty, legislation is needed so the prosecution can make this application when a child is intimidated by the alleged offender.

109. In Fiji, as in other countries, the Department of Social Welfare has legislative powers to remove children who are "at risk" of abuse and place them in alternative care. Most children in alternative care live with their relatives.

3. Future implementation

110. The Women's Crisis Centre has drafted legislation on domestic violence to provide protection orders to all family members, including children, who are subjected to violent threats and harassment. These protection orders would require that police enforce any breaches.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

A. Parental responsibilities

1. Legal framework

111. The statutes that relate directly to the welfare of children are the Juveniles Act, the Adoption of Infants Act, the Probation of Offenders Act, the Matrimonial Causes Act, and the Maintenance and Affiliation Act. These Acts, together with Fiji's legislative framework and general practices, are in line with most of the principles of the Convention on the Rights of the Child. Furthermore, work is under way to redesign legislation so that the rights of children in Fiji are better safeguarded and existing laws are interpreted to reflect the best interests of children.

112. The Juveniles Act provides for the care, control and custody of any child by his parents. Section 57 provides powers to the Director of Social Welfare so that he or she can intervene when abuse is alleged. The Department of Social Welfare only seeks a care order when parents are proved to be incapable of caring for, protecting and guiding their child.

113. The proposed Family Law Act and the recommendations of the Beattie Commission have been forwarded to the Law Reform Commission for review in 1996.

2. Implementation

114. The adherence to many specific points of the Juveniles Act is weak. It is necessary to ensure that practices are nearer to those that were intended and that the various articles of the Convention on the Rights of the Child are satisfied. This in part would require the setting up of information systems to monitor the welfare of all children, particularly those who are most disadvantaged. Fiji's Coordinating Committee on Children intends to implement the Convention on the Rights of the Child in a way that ensures the rights of Fiji's children are truly being met, and not just to satisfy bureaucratic requirements.

B. Recovery of maintenance for the child

1. Legal framework

115. Under the Matrimonial Causes Act, if parents have separated, the parent having the care of any children of the marriage can apply to the court for maintenance for the children. This Act applies to children up to the age of 18 years, or older if special circumstances apply.

116. The Maintenance and Affiliation Act provides broad powers to the court to ensure that all children are financed and maintained by their parents, regardless of any marriage. This Act applies only to children up to the age of 16 years of age.

2. Implementation

117. Fiji has agreements to enforce child maintenance court orders with Australia, Canada, New Zealand, the United Kingdom, some states in the United States and some neighbouring Pacific island countries.

118. Children do not, however, have a high chance of benefiting from maintenance orders. Even though orders are based on a non-custodial parent's capacity to pay and are usually for minimal amounts, such as F$ 5 to F$ 7.50 per week per child, only 19 per cent of all maintenance orders are paid regularly; 35 per cent are paid intermittently and the rest - almost half - are never paid at all. Magistrates are reluctant to imprison defaulters as they would then be even less able to pay. The Department of Social Welfare provides a monthly Care and Protection Allowance of F$ 30 per child to foster parents or care institutions and, very rarely, for a child living with one natural parent. Each year the Department's budget for this allowance is insufficient to meet the demand.

C. Children deprived of a family environment

1. Legal context

119. Under the Juveniles Act, children deprived of a family environment are to be taken into the care of the Department of Social Welfare, and the

Department is to provide them with care in approved institutions, facilitate adoption, or arrange their placement with guardians, relatives, or other interested persons.

2. Implementation

120. The social structure of the family and the role of the extended family are valued in Fiji's communities. The extended family provides a social web for the welfare of its members and plays a key role in keeping together its members. Nevertheless, in the face of evidence that the extended family is under increasing pressure, especially in urban areas, avenues have to be explored to extend the facilities for alternative care when required. Given Government's concern with containing the size of the public service, the capacity of community-based, non-governmental organizations has to be strengthened so they may provide such services.

121. In Fiji, there are five Children's Homes that provide institutional care: St. Christopher's, Veilomani Boys' Home, Dilkusha, the Boys' Centre, and the Girls' Home, which offer a total of 110 places. All of these facilities are in the Suva area which means some children are required to live far away from their families. Very few children are fostered as few foster parents have been identified. A recruitment drive is needed to identify interested people who may be trained to care for children who are at risk in their own homes.

Child welfare cases, 1991-1994

	1991	1992	1993	1994
Child protection cases	714	1 091	1 336	1 752
Children in institutions	821	386	349	87
Foster care	10	77	80	41
Adoption applications	259	273	408	509
Adoption placements	68	80	147	89
Total	1 872	1 907	2 320	2 479

Source: Department of Social Welfare.

D. Adoption

1. Legal context

122. The Adoption of Infants Act ensures that the rights and safety of a child who is placed for adoption are safeguarded and that he or she is placed with suitably qualified adopters. The Adoption Court is held in the normal Magistrate's Court.

123. An Inter-Country Adoption Protocol between Fiji and the countries of the South Pacific sets out reciprocal guidelines and procedures to evaluate applications for inter-country adoption.

2. Implementation

124. Approximately 100 children are adopted through the Department of Social Welfare each year, 10 of whom are adopted abroad.

125. The mother of a child has the right to decide who she wants to adopt the child. Many adoptions do not go through the Department of Social Welfare but are arranged privately through the court. The Department of Social Welfare is only involved when the child is abandoned or the mother seeks its assistance to find adoptive parents.

126. There are other adoptions, however, that are illegal. Adoption legislation is being re-examined in order to close the loopholes that facilitate these. Of particular concern is evidence that some children are being sent overseas outside of existing inter-country protocols and occasionally because of the loose interpretation of certain parts of the Adoption of Infants Act. For example, section 6 precludes "foreign residents" from adopting Fiji children, but this restriction is not always observed by the court.

E. Illicit transfer and non-return

1. Legal context

127. Existing legislation does not adequately protect children from this situation, and needs to be re-examined. There is no legislation in place to cover children from abroad who are subjects of custody disputes.

128. The Adoption of Infants Act does not set out the steps to deal with the situation where a child is to be sent out of the country for illegal adoption overseas.

2. Implementation

129. The Magistrates Courts have no power to make interim custody orders pending a final judgement in a family dispute unless the parent has also filed for divorce. This has led to cases of children being abducted by a parent and tugged back and forth. The small amendment needed to improve the legislation has been formulated by the Department of Social Welfare but it has not yet been enacted.

130. The Hague Convention on Civil Aspects of International Child Abduction is being considered for ratification by the Fiji Government. The Coordinating Committee on Children has reviewed this convention and is considering its cost implications before making recommendations about its ratification to Cabinet. The convention would put in place a simple procedure whereby children who were abducted from or to another signatory country could be returned home.

F. Abuse and neglect of children and their physical and psychological rehabilitation and social reintegration

1. Legal context

131. As mentioned above, the Juveniles Act (sect. 40) sets out the grounds for identifying a child who is in need of care, protection or control. Section 55 of the Act deems it an offence to assault, ill-treat, neglect, abandon, or expose a juvenile to suffering or injury to health. The Penal Code includes other measures to safeguard and protect children from the offences of abduction, defilement, and infanticide. Both the Penal Code and the Juveniles Act require parents or guardians to provide children the necessities of life in regard to clothing, shelter and food.

132. Police and prosecutors pursue offences under the Criminal Code and the Department of Social Welfare acts to protect children under their powers and responsibilities specified by the Juveniles Act.

2. Implementation

133. While most homes provide love and care to their children, they cannot provide the professional psychological guidance and counselling required by disturbed child abuse victims, and nor are these services available elsewhere in Fiji. The lack of proper assistance can have far-reaching repercussions on the child's recovery and development.

134. Cabinet has approved the setting up of a Child Welfare Unit within the Department of Social Welfare. Among the tasks of this unit will be to help child victims of abuse to recover both physically and psychologically and, where appropriate, to assist their reintegration into their family. Currently the Department of Social Welfare attempts to provide similar programmes through its generic services.

135. Constraints on assistance to children include the lack of reporting of child abuse, the lack of legislation that makes reporting mandatory, the lack of specially trained staff, and the financial limitations brought about by the range of other services the Department must deliver. The Department of Social Welfare attempts to provide counselling to children in its care and their relatives, and other forms of guidance and supervision, but is restricted by its limited resources. The Department also sponsors NGOs to care for abandoned children and expectant unmarried mothers who want their babies placed for adoption, and to arrange refuge for battered women and children. NGOs are able to provide some counselling to children and their families.

136. Medical staff observe that the physical and sexual abuse of children and mothers appears to be more prevalent, perhaps because it is now more openly reported. A policy on child abuse for Fiji health institutions has been formulated (in collaboration with the Department of Social Welfare and the police) and requires health staff to investigate the circumstances of any child that comes to them with any of the following conditions, however slight the first suspicion:

(a) Injuries not fully explained or injuries with an inconsistent explanation;

(b) Multiple injuries or bruises of different ages;

(c) Injuries that are acknowledged to have been caused by an adult;

(d) Any injuries to genitalia or anus, or any vaginal or anal discharges;

(e) A child's neglected appearance, with or without injuries or bruises.

137. Non-mobile children (usually under one year) will be viewed with particular suspicion if they present injuries unless a full and consistent account of the accident is obtained. Particular injuries are often associated with child abuse. These include scalds; suspicious injuries to the buttocks, legs and feet; small round burns by cigarettes; injury or severe bruising to the external ear; injuries within the mouth such as tears of the fraenulum and other injuries beneath the upper lip; all of which will immediately be referred to the Paediatric Registrar or Consultant on call for further assessment. The police and the Department of Social Welfare will also be informed.

138. Physical and sexual abuse of children is known to occur and it is believed to be very under-reported in official statistics. Until recently, the reason has been the poor institutional links between agencies. Until links (discussed above) were forged between health staff and the Department of Social Welfare, nurses and doctors often saw signs of child abuse but were unable to do anything more than tend the injured child. There is, however, no government facility that can work with families in potential trouble, a task that has partially been taken on by religious organizations and NGOs.

139. Different patterns of child rejection emerge between the two major ethnic groups. While Fijian communities do not encourage "out-of-wedlock" pregnancies, neither do they often reject the child or its mother. Usually the biggest problem for the child's welfare is the poor definition of who is responsible for its care and, as the child moves freely from one guardian to another, his or her nutrition, health and social development may well be neglected. The Indian community is much less accepting of out-of-wedlock pregnancies and cross-ethnic marriages, often viewing them as a family disgrace and outrightly rejecting the mother and child. If the child is not successfully adopted then the mother must struggle on without much family or community support. Where relatives assist, their behaviour may be punitive, exploitative, or rejecting.

3. Future implementation

140. A formal reporting system of child abuse statistics is now being developed and should soon be operating. Reporting forms have been distributed to various agencies involved in child abuse, including the police, the Department of Social Welfare, the Ministry of Health, and the Women's Crisis

Centre. Other cases that are seen by private doctors, religious organizations or private counsellors will not, however, be recorded. To include them would require that reporting of child abuse is made mandatory.

141. Children are being made aware of their rights through the education system. Work is under way to circulate information to all schoolchildren about their rights under the Convention on the Rights of the Child and, in particular, their right to speak up about child abuse.

G. Review of arrangements for children not living with their immediate family

1. Legal context

142. The Juveniles Act sets out the circumstances and steps for taking children into alternative care and allows for periodic review of placement, but these latter arrangements are not sufficiently specific.

2. Implementation

143. There is no legal mechanism to review a child's situation unless he or she was actually placed in care by the Department of Social Welfare. Even then, the Department has insufficient staffing resources to conduct regular reviews. Most children are informally placed with some member of their extended family and there is no further monitoring of their situation.

144. The review of adoption procedures that is now under way and the likely repeal of the Juveniles Act in 1996 (to be replaced by improved legislation) will ensure that care and protection measures are strengthened for children in alternative care.

H. Future implementation of measures to ensure child rights in regard to the family environment and alternative care

145. The Beattie Report made specific recommendations to review legislation affecting children, and the Beattie Report Implementation Committee is now examining these recommendations. The major constraint to implementing the recommended changes is their cost, and the Committee is first identifying those recommendations that have no cost implications.

146. The Coordinating Committee on Children has recommended that all government ministries and departments re-examine their procedural and actual practices to ensure that they protect the rights of children in Fiji and comply with the Convention on the Rights of the Child. The Coordinating Committee may draw up model guidelines to assist government departments and non-governmental organizations.

147. Many of the wider family-related issues of the Convention on the Rights of the Child are included in the Declaration of the National Summit on the Family. The Coordinating Committee on Children recommends that the Declaration be formally adopted by the Fiji Government.

148. The provisions of legislation relevant to children (in particular the Juveniles Act and the Matrimonial Causes Act) need to be consolidated, a matter that is expected to be addressed soon by the passing of a new Children and Young Persons Act. As well, current fault-based divorce proceedings engender unnecessary bitterness between parties and there is a need to move to the irretrievable breakdown model that may cause less difficulties for families, particularly the children.

149. The Beattie Commission recommended that the Family Court should deal with all juvenile matters and all family law matters. The Family Court relies heavily on counselling and reconciliation. There should be three Family Courts in Fiji (in Suva, Lautoka, and Labasa) that travel to the districts to cater for the needs of all persons requiring their service, and to provide the last resort for litigants. The new Family Court should have the advantage of imposing maintenance and affiliation orders that are uniform in scale. With a better staffed registry, complaints about the failure of the court to enforce such orders could be reduced. All persons filing papers in the registry would first be expected to attend family group sessions that could settle matters through counselling. In such informal sessions, the child's interests would be represented by the Public Legal Adviser's Office, or, where there is a conflict of interest, by an Official Solicitor appointed by the Legal Aid Commission. Once children's interests and welfare are better recognized, however, their need to appear in the Family Court would be minimized.

150. One issue with the Family Court that is holding up changes is the lack of expertise in government agencies and in the community in providing social welfare for children, in particular the shortage of trained foster parents, and very limited counselling and mediation facilities for families.

VI. BASIC HEALTH AND WELFARE

A. Survival and development

1. Legal context

151. The goal of Fiji national health service is to promote, protect, maintain, restore, and improve the health and well-being of the people of Fiji as a major component of their quality of life, and to develop from within the national resources a national health service of primary, secondary and appropriate tertiary services which is comprehensive, coordinated, integrated, accessible, responsive, balanced and equitable (in relation to services and finance). Primary health care, health promotion, health protection, and disease prevention are the central functions and primary tools of the health system.

2. Organizational network

152. The Primary and Preventive Health Services provided by the Ministry of Health have been in operation for many years.

153. The organizational network of the Child Health Services of the Ministry of Health consists of 3 divisional hospitals, 2 specialized hospitals, 16 subdivisional hospitals, 3 area hospitals, 53 health centres,

and 96 nursing stations. The system comprises a coordinated network of offices that report through the subdivisional and divisional hospitals to the central Ministry of Health, and ensures consistent policy implementation all the way from the Ministry of Health to outlying nursing stations. The Fiji School of Medicine and the Fiji School of Nursing train doctors and nurses of the Pacific island region to implement policies at the community level and to provide services that are specific to their country's needs. Several non-governmental organizations work closely with the Ministry of Health in developing and implementing programmes related to child health, retraining community health workers, and supplying basic equipment for community health clinics. The organizational structure of the Ministry of Health is in annex 3.

154. The health services in Fiji promote primary health care and encourage parents to be responsible for their own and their children's health. Other priorities are to:

(a) Increase access to and promote the use of low-cost high-impact health technologies;

(b) Reduce environmental hazards by promoting safe water, excreta disposal, vector control and sound home hygiene;

(c) Ensure access to quality health care;

(d) Strengthen services to control health-related problems;

(e) Develop a protocol for notification and referral of cases of child abuse and ill-treatment;

(f) Upgrade Children's Units in all subdivisional and divisional hospitals; and

(g) Improve referral and evacuation services from rural areas to base hospitals.

3. Implementation

155. Current projects to improve children's health include:

(a) Comprehensive upgrading of rural subdivisional hospitals, health centres and nursing stations, such as the Kadavu Rural Health project that aims to upgrade the facilities and build a modern hospital, retrain staff to update their skills and knowledge and to develop community participation in health promotion. The Ba Subdivisional Hospital was upgraded with a new children's ward in 1994;

(b) Strengthening the national immunization programme for immunizable diseases, such as the 1994 vaccination campaign against hemophilus influenza type B (HIB);

(c) Setting up of a Diarrhoeal Disease Training Unit and Acute Respiratory Disease Training Unit to provide management training of both

diarrhoeal and acute respiratory diseases (with a consequent decline in the number of severe cases being referred to hospital for management); and

(d) Embarking on the Baby Friendly Hospital Initiative (BFHI) to promote, protect, and support breast-feeding practices throughout Fiji.

156. The Ministry of Health promotes and protects the health of pregnant and lactating women. Ninety-five per cent of all births take place in hospitals. Almost all the other 5 per cent are attended by trained Traditional Birth Attendants. Over 95 per cent of women attend antenatal clinics during their pregnancy. Health awareness campaigns inform pregnant and lactating women about protecting their health.

157. Family planning services and information are also widely available. The Ministry of Health emphasizes the health benefits to both mother and child of an adequate spacing of births. Family planning is widely practised in Fiji. The contraceptive prevalence rate (CPR) rose from 26.6 per cent of women of child-bearing age in 1990 to 30.7 per cent in 1993.

158. Child immunization coverage in Fiji is well over 90 per cent. The Immunization Schedule includes BCG, polio, diphtheria, pertussis, measles, hepatitis B, rubella and tetanus. The HIB vaccination campaign gives 0 to 5-year-old children protection from meningitis that is caused by this bacteria, one cause of illness and death in this age-group.

159. Health promotion and regular growth and development monitoring of children aged 0 to 5 years are components of the Ministry of Health's Maternal and Child Health programme. A School Health Programme addresses the needs of children in schools, including testing of vision and hearing, immunization against diseases (TB, tetanus and rubella), general screening for dental and health problems, nutritional assessment and advice, and environmental and sanitation issues.

160. The Ministry of Health also provides emergency services such as:

(a) A 24-hour accident and emergency service in all hospitals;

(b) Doctors are on call 24 hours at all hospitals and health centres, and nurses are on call at all nursing stations;

(c) Emergency patients are evacuated from remote areas and outlying islands by helicopter, plane, or boat to base hospitals; and

(d) Social emergencies are sometimes looked after by hospitals providing them a temporary "safe place" to stay, such as a bed in the children's ward for an abused child.

4. Future implementation

161. The Ministry of Health is working closely with many local, regional, and international agencies to improve child health in Fiji.

162. The common goal is to reduce childhood illness and death from acute respiratory infection, meningitis, prematurity and STD/AIDS perinatal transmission by the year 2000 to at least 50 per cent of the 1990 levels. The health of mothers also needs better protection.

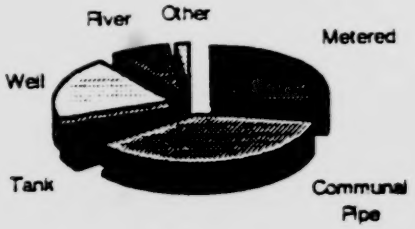
163. To achieve this goal, some primary health-care programmes need more resources, particularly the control of diarrhoeal and respiratory diseases; promotion of breast-feeding; the expanded programme of immunization; growth monitoring; primary eye care; school health services; family planning; antenatal and post-natal care; and cervical cancer screening.

B. Safe water and sanitation

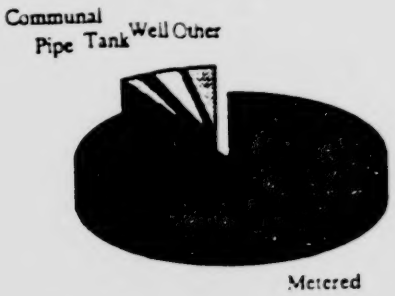
164. All metered water (both rural and urban) is treated with chlorine and is safe. Water from other sources is not as reliably safe. According to the 1986 census, only about 56 per cent of the population enjoy safe drinking water.

165. Every effort is being made to make drinking water safe and accessible to children and to dispose of excreta by sanitary means. The Rural Community Water Supply project is improving water supplies to schools and rural communities throughout Fiji, according to cases of need identified by health inspectors and the enthusiasm of communities to improve their living conditions. In collaboration with the Ministry of Infrastructure and Public Utilities, small water-supply projects are undertaken on a self-help basis, the community contributing some funds and unskilled labour. This project is popular and successful because it meets the demand from rural communities for water-supply systems that are reliable but inexpensive.

Sources of water for Fiji's rural population



Sources of water for Fiji's urban population



Source: Fiji Census, 1986.

166. Regular drought remains a problem on small islands and on the leeward sides of the larger islands, and the Ministry of Infrastructure and Public Utilities then transports water to the drought-stricken areas.

167. The Fiji Government recognizes the close link between good water supply and good public health, and gives high priority to improving water systems. The need for safe water is demonstrated in the 1993 National Nutrition Report that showed:

30 per cent of children under 5 years suffered from infected wounds and scabies (44 per cent of Fijian children and 12 per cent of Indian children);

11 per cent of children under 24 months suffered from diarrhoea (19 per cent of children in rural areas and 7 per cent in urban areas);

Skin infections and diarrhoea are more common in communities where there are poor water supplies and sanitation problems.

C. Health status of Fiji children

168. Since 1990 there has been a considerable decline in the infant mortality rate but the maternal mortality rate has increased. The incidence of low birth weight and underweight children have been reduced. Other health indicators have not changed much in the last five years.

Child health indicators for Fiji, 1990 and 1993

	1990	1993
Population	740 000	771 000
Women (15-44 yrs)	177 000	184 900
Total live births	18 643	19 220
Crude birth rate	24.3	24.9
Crude death rate	5.7	5.9
Natural increase	1.4	1.6
Infant mortality rate	22	16.8
Under 5 mortality rate	NA	0.71
Maternal mortality/100,000	26	31
Total fertility rate	3.4	3.2
Low birth-weight babies (weighing less than 2,500 g)	18%	12%
Underweight children (under 5 yrs)	15%	10.5%
Life expectancy at birth	69 years	71 years
Medical attendance at birth	97%	98%

Source: Ministry of Health, 1994.

169. Fiji has made good progress in improving child survival. The Ministry of Health has recorded a reduction in the infant mortality rate from 22 per 1,000 live births in 1990 to 16.8 per 1,000 live births in 1993. Over the same period, however, the maternal mortality rate increased from 27 per 100,000 to 41 per 100,000 live births.

Infant mortality rate, 1975-1993

	1975	1980	1985	1990	1991	1993
Infant mortality rate	41.4	32.8	17.4	22	19.0	16.8

Source: Ministry of Health, 1994.

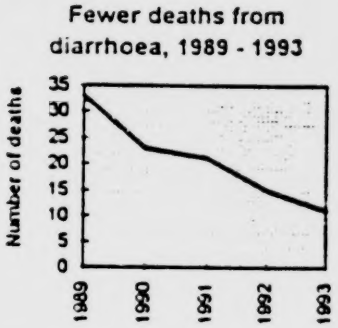
170. The major causes of death for infants in Fiji in 1993 were:

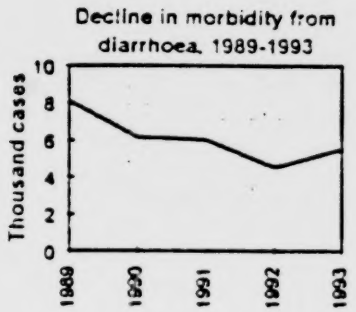
Certain conditions originating in the perinatal period	49.8%
Diseases of the respiratory system	16.9%
Congenital anomalies	11.9%
Infectious and parasitic diseases	5.9%
Diseases of the nervous system and sense organs	5.6%

Source: Ministry of Health, 1994.

171. Some major diseases have been eliminated from Fiji. There have been no cases of polio in Fiji since 1962. There has been no reported case of neonatal tetanus since 1980. The last mortality from measles was reported in 1989 and the one previous to that was in 1979. While epidemics of measles occur in cycles every three to four years and affect children above 9 years, the incidence of this disease is well below pre-immunization levels.

172. There has been a reduction in the morbidity and mortality of children under five years caused by infantile diarrhoea. Oral rehydration therapy as diarrhoea disease management is widely practised.





Soource: Ministry of Health and Social Welfare, 1994.

173. Out of the 31 people who have tested positive for HIV in Fiji as of July 1995, 2 were aged less than 19 years.

D. Nutrition

174. Although there has been a reduction of severe and moderate malnutrition in children under five years over the past decade, malnutrition remains a definite problem in Fiji. The 1980 National Nutrition Survey showed malnutrition to severely affect 5.8 per cent of children and moderately affect another 21.2 per cent. The 1993 National Nutrition Survey showed 1 per cent of rural children to be severely malnourished, 15 per cent of all children to be moderately affected by malnutrition, and a problem of overnutrition in urban areas.

Nutritional problems in Fiji children, 1980 and 1993

Nutritional problem	1980	1993
Low birth-weight babies (less than 2,500 g)	n.a.	11%
Children severely malnourished	5.8%	1% rural children
Children moderately malnourished	21.2%	15%
Underweight children (0-4 years)	16.4%	10.5%
Overweight children (0-4 years)	n.a.	4.5%
Overweight children (5-9 years)	n.a.	5.9%
Anaemic children (0-4 years)	n.a.	40%
Bottle-fed infants (0-3 months): urban areas	50%	50%
Bottle-fed infants (0-3 months): rural areas	12%	4%

Sources: National Nutrition Surveys, 1980 and 1993.

175. Overall the rate of children under 5 years who are underweight for age is 10.5 per cent, with a significantly higher rate (18.5 per cent) for Indian children. This situation represents an improvement since 1980 when 6 per cent of children under 5 years were underweight for age (NNS, 1980).

176. The incidence of low birth-weight babies is currently estimated at 11 per cent, with a substantial difference between Indian infants (21 per cent) and Fijian infants (4 per cent). The possible causes of low birth weight include anaemia in pregnant women, smoking, poor eating habits, and the low socio-economic status of women. The Ministry of Health is working with the Red Cross and the Food and Nutrition Committee to address this by improving antenatal services; providing health education that encourages pregnant women to book early into antenatal clinics, to adopt healthy diets, and to stop smoking; and promoting breast-feeding.

177. Anaemia is a significant problem in Fiji. The 1993 National Nutrition Survey found 62 per cent of pregnant Indian women and 52 per cent of pregnant Fijian women to be anaemic, as were 32 per cent of women generally and 40 per cent of children under 5 years. The School Health programme of the Ministry of Health is addressing iron deficiency anaemia in children by identifying anaemic children and referring them to physicians for treatment. Through the Ministry's routine antenatal care, women are given iron supplements and undergo deworming if necessary.

178. Iodine deficiency is a problem in several areas. The lack of iodine consumption poses a nutritional problem that particularly affects the health of pregnant women and the mental and neurological development of their babies. Legislation to ensure that iodized salt only is allowed into the country is now being drafted.

179. Vitamin A deficiency is not a recognized problem in Fiji. The National Food and Nutrition Council promotes family food production and encourages the planting and consumption of green vegetables and fruits that are rich in vitamin A.

180. Government and non-governmental organizations, such as the Nursing Mothers' Association, actively promote breast-feeding. UNICEF and WHO are very supportive of this work. The emphasis is on empowering women to exclusively breast-feed their children for four months and to continue breast-feeding with complementary food into the child's second year of life. One hospital in Fiji has been declared "Baby Friendly" and other hospitals are going through various stages of assessment towards this status - an achievement in the promotion of breast-feeding. The Fiji Code for the Marketing of Breastmilk Substitutes is being redrafted for presentation to Cabinet.

181. Weaning practices are also a target of health education. There is particular concern about Fijian babies. Although they are usually born with above-average birth weight, their growth often slows after three to five months. Poor weaning practices may well contribute to this decline. A vigorous programme is under way to educate health-care providers and the general public about good nutrition for children.

E. Children with disabilities

182. In Fiji, three major causes of disability are of prominent importance:

(a) Sequelae of meningitis;

(b) Perinatal causes such as prematurity, low birth weight and birth injuries;

(c) Congenital abnormalities.

183. The care of disabled children has traditionally been a family concern in Fiji. The special needs of disabled children are otherwise principally met by NGOs in Fiji. for example, in 1983, the Save the Children Fund (UK) began a programme for the early identification and management of children with cerebral palsy. In conjunction with the Ministry of Health, SCF has trained community rehabilitation assistance who are now looking after children with cerebral palsy as well as other physically and mentally handicapped children in the community.

184. Health workers in the MCH programme identify young children who are slow to develop by using the milestone checklist. These are then referred to the Early Intervention Centre for Specialized Care.

185. Schoolchildren are monitored by the School Health programme. Any disabilities diagnosed or suspected are referred to specialists for treatment or referred to rehabilitation centres.

186. All rehabilitation centres in Fiji, such as the School for the Blind, the Hilton Special School, and the School for the Handicapped come under the Fiji National Council for Disabled Persons. The Council formulates national policies for the rehabilitation centres and plans and coordinates their implementation. The Council also works on acquiring financial aid from external sources and maintains a fund.

F. Budgetary and other provisions

187. The total health budget in 1993 was F$ 50,470,000, a 51 per cent rise in expenditure since 1990. Actual expenditure on children's health is difficult to determine because the present accounting system does not record what is spent on children separately from what is spent on the rest of the population. The Ministry of Health and Social Welfare acknowledges the vast contribution provided by international agencies and NGOs without whose support our programmes would not be successful. Foreign aid accounted for 18.4 per cent of the total expenditure of the Ministry of Health in 1993.

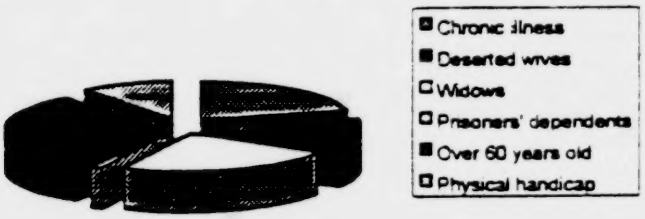
G. Social security

188. Existing legislation and policies only narrowly provide for social security and child services. Only a small proportion of economically active people who are in formal employment are eligible for pensions under the National Provident Fund Act. The large majority of people have no formal provision for social security at all. The Government provides a Family Assistance Allowance to people who are proven to be quite destitute. Even so, the maximum monthly allowance of F$ 80 is barely adequate to meet basic needs,

and in recent years the number of people eligible for the allowance has exceeded the funding available. The inadequacy of social security has a direct impact on the welfare of children and calls for a review of this scheme. The Fiji Government and UNDP are currently undertaking a study into poverty in Fiji and this will provide an opportunity to reassess the efficacy of the Family Assistance Scheme.

189. Under the Family Assistance Scheme, the Department of Social Welfare in 1994 dispensed F$ 3,075,000 to 8,885 welfare recipients, which approximates an annual grant of F$ 346 per person. The largest group of beneficiaries (31 per cent) are elderly people over 60 years with another 24 per cent going to widows, a good proportion of whom are also elderly. Another one third of recipients are chronically ill or physically disabled. Only 13 per cent of recipients are deserted wives or the dependents of prisoners. Children are not, therefore, often the direct beneficiaries of Family Assistance.

Recipients of Family Assistance, Fiji, 1994



Source: Department of Social Welfare, 1995.

H. Living standards

190. Children have the right to a satisfactory standard of living that meets their needs for physical, mental, spiritual, moral and social development. This is an important responsibility of their family and of the Government.

191. Providing housing is a priority of the Fiji Government for housing development contributes not only to living standards but also to economic growth. The Housing Authority was established by the Government in 1955 to address the problems of housing in urban and periurban areas and to improve village housing. Another government agency, the Fiji National Provident Fund, is also involved in developing housing by providing home loans to its members. The Public Rental Board was established in 1989 to operate the housing rental programme of the Housing Authority. One of the principal objectives of the Board is to provide economically sustainable rental housing for low-wage, urban families. This subsidized rental housing is intended as a stepping stone towards home ownership or private renting. But while tenants are expected to vacate their flats when their financial and family circumstances permit, this seldom happens.

192. Concerns about the housing problems many families face are highlighted in a recent report of the Senate Select Committee on the Housing Authority and the Public Rental Board (Parliamentary Paper No. 33 of 1995). In recent years, housing costs have increased much more rapidly than most families' incomes. Large devaluations of the Fiji dollar in 1987 had the effect of

decreasing real income while increasing costs of imports. Many building materials in Fiji have some imported content. Construction of houses in villages is mostly self-financed but the use of modern building materials has substantially increased their cost. The problem of rising costs is particularly acute for urban families in rental housing. In mid-1991 the Public Rental Board and the private rental market increased rents, with rents at the lower end of the market rising from around $50 to $300 a month, a change reflected in a 15.9 point rise in the housing index.

193. Pressure on the national housing market has been intensified by low levels of housing construction in recent years. In 1994, the Ministry for Housing and Urban development estimated Fiji's housing stock requirement to be around 3,500 units, but that the construction industry could produce no more than 1,500 units. Around 20 per cent of Fiji's urban population live in a single room dwelling and approximately 50 per cent of all houses are occupied by an extended family, further indicators of the urban housing shortage in Fiji.

194. Income distribution in Fiji is very uneven and the housing needs of the people in the lowest economic strata largely go unserved. Especially disadvantaged are households with annual incomes of less than F$ 3,500, and those that are headed by aged or disabled persons, single parents, or women, NGOs, such as the Housing and Relief Trust (HART) and Rotary International, provide low-cost shelter to families in particular hardship, but they cannot alone meet the need.

195. One of the consequeneces of the housing shortage, low incomes, and urban unemployment is the rapid growth of squatter and other informal settlements around all of Fiji's towns. A survey by the Suva City Council in 1986 estimated that one in every eight persons in Suva was a squatter. Approximately 25 per cent of households in Suva live in informal settlements and fringe villages. In 1992 there were 26 such settlements in Suva. Houses in these settlements are not subject to formal planning regulations, infrastructure standards or building regulations. They are usually substandard dwellings that may be unsafe, and usually lack basic amenities like piped water, adequate sanitation electricity, or garbage disposal. The 1993 National Nutrition Survey provided further evidence that poor housing conditions have negative consequences for the health and well-being of children.

Growth of the squatter population in the Suva city area, 1978-1994

Ethnic group	1978 1/	1983 1/	1991 2/	1994 2/
Fijians	3 203	3 808	3 808	5 000
Indians	4 390	5 438	4 175	5 200
Others	250	315	198	178
Total	7 849	9 317	8 181	10 378

Source: Parliamentary Paper 33 of 1995.

1/ 1978-1983 figures from Suva City Council surveys.

2/ 1991-1994 figures estimated.

I. Constraints on the effective protection of children's health

196. In comparison to many developing countries of the world, the health status of the people of Fiji is good and improvements over recent years are impressive, reflecting a lot of dedication and hard work and the committed support of international agencies. The quest to better these achievements, however, must never be abandoned.

197. In the area of improving child survival and development, the comprehensive infrastructure of the health services allows for the easy implementation of programmes, giving children access to as good a health-care system as is possible with the available resources. The main constraints to these programmes nevertheless are insufficient resources in terms of finance, staffing, supplies, and equipment; the geographic characteristics of a small-island nation; and insufficient public awareness and knowledge.

198. Much work has been undertaken to make safe drinking water and sanitation more widely available, an improvement that will be reflected in the results of the 1996 national census.

199. The health status of Fiji children is generally good although some areas, such as nutrition, antenatal care of mothers, and the care of premature babies by providing more paediatricians, need to be improved.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

A. Education, including vocational guidance

1. Legal context

200. The provision of education in Fiji is a partnership between the Government and non-government Management Authorities. Of the 709 primary schools, the Ministry of Education directly runs only 14. Similarly, the Ministry operates only 12 of the 148 secondary schools in Fiji.

201. The Education Act defines the supervisory and regulatory powers of the Ministry of Education and ensures that entry into any school, regardless of its management, is not restricted by a pupil's ethnicity or religion.

2. Implementation

202. Education is not compulsory in Fiji, for the cost of providing free education to all children would be prohibitive. The current policy is to provide tuition fee-free education for all children in primary schools, with the aim of eventually making education compulsory up to 15 years. The power to make education compulsory rests with the Minister of Education, Women, Culture, Science and Technology.

203. Local communities and organizations operate most schools in Fiji in partnership with the Government. The Ministry of Education provides grants for equipment and necessary items such as desks, chairs, and books, and for construction of school buildings and teachers' accommodation on a pro rata basis. The value of these grants is determined by the number of pupils

enrolled in a school. The rate increased in 1994 from F$ 12 to F$ 30 per child in a school with more than 150 pupils, with a higher rate allocated to schools with less than 150 pupils.

204. Most primary and secondary school teachers are civil servants and their salaries are paid by the Ministry of Education. Some private schools fund additional teaching positions. There are 4,921 civil servant and approximately 70 non-civil servant primary teachers throughout Fiji. Class sizes average 32 pupils per teacher in urban schools and 21 pupils per teacher in rural schools, with classes being much larger or smaller in some localities. There are 2,263 secondary civil servant secondary school teachers and 1,077 grant-in-aid teachers; some of the latter have no teacher training but have specialist knowledge in their field of instruction. The Ministry of Education provides training programmes during school holidays to develop the skills of unqualified teachers.

205. The Ministry is improving the quality of education provided by primary and secondary schools by improving the quality of teaching, such as by raising entry qualifications into teachers' colleges and providing in-service courses in school management for head teachers. The UNESCO-funded Basic Education and Life Skills Programme provides in-service training for primary teachers in literacy teaching and classroom skills, facilities community support for education, and has installed a management information system in the Ministry of Education.

206. While primary school children do not pay tuition fees, as such, schools levy fees, the amount of which varies from school to school. Costs are mainly higher in urban than in rural schools. The fees include levies for the construction and maintenance of school buildings, admission and administrative charges, salaries for support staff, and some extracurricular expenses, such as for sports equipment.

207. Additional costs to parents for items such as uniforms, books and stationery supplies vary between $150-$200 per year for a primary school pupil and $300-$450 per year for a secondary school student. Parents are also responsible for the cost of transporting children to and from school, although the Government provides small grants to isolated rural communities to help transport children and teachers.

208. Religious organizations, charities, and other NGOs help some children from low-income families meet their school costs. Amounts provided range from $10 to $200 a year. Assistance is also given by the Ministry of Education by granting remission of secondary-school fees to students whose parents jointly earn less than $5,000 a year. It is also available to individual children from low-income families in the form of government scholarships that are granted on academic merit as well as on need. Some private scholarships are also available to children of academic potential, particularly those from rural communities and large families. Some NGOs recognize that not all families are aware of the availability of assistance and they are implementing awareness programmes through school managements.

209. Early childhood education is not a prerequisite to formal education. Most kindergartens and pre-schools are operated by community groups and buildings, facilities and programmes are of varying standards. All expenses including teachers' salaries, equipment, and running costs, are borne by the

operator. No grants are available. Under the Education Act, kindergartens and pre-schools come under the responsibility of the Ministry of Education, but the Ministry's role is principally to licence and monitor them. The Ministry assists with training by providing a six-week training course for prospective teachers and operators. Other training has been made available through assistance from UNICEF in developing a three-year Early Childhood Education Diploma course that is now offered by the University of the South Pacific. Licencing is not, however tied to qualifications.

210. There are a number of privately operated pre-school and early primary-level schools, known as "Schools of Nine". These schools usually operate in private homes with up to 9 children in order to avoid meeting the requirements of the Education Act for that applies only to schools with 10 children or more. The Ministry of Education has no supervision over Schools of Nine, nor any control over the curricula, teacher qualification, nor the safety and well-being of the children.

211. Technical and vocational courses are available for secondary school students and school leavers. Secondary schools have the option of including a technical or vocational stream in their curricula, and such courses are offered at 37 secondary schools, 27 of which are in rural areas. Courses are of two years' duration after completion of Form 4 and include carpentry and joinery, automotive engineering, tailoring, and catering. Religious organizations and other NGOs offer other vocational courses, such as at Montfort Boys Town, courses that vary in length and content but are recognized and accredited by the Ministry of Education. There are 40 such programmes operating outside of the secondary school system that cater for youth who do not attain mainstream academic standards. They include religious vocational training, carpentry, farming, fishing, home economics, crafts, art, journalism, boat building, house building, engineering, and mechanical repairs. Still, opportunities for technical and vocational education for young people in Fiji are limited. There are insufficient programmes to meet the demand, particularly for people in Fiji's outlying islands.

212. Vocational guidance is provided by head teachers, principals and senior teachers. Each year, the Ministry of Education arranges Careers Expositions in the main towns, giving students an opportunity to view displays and discuss career paths. There are no full-time guidance counsellors in schools, but the Ministry is now considering this proposal.

213. Higher education is available for students who satisfy academic entry requirements. Students can either gain scholarships or attend tertiary institutions as private fee-paying students. Government scholarships for higher education institutions are administered by the Public Service Commission and their availability is linked to the Government's workforce requirements. Scholarships are for placement at the University of the South Pacific, the Fiji School of Medicine, Teachers' Colleges, and overseas universities. Fifty per cent of scholarships are awarded to indigenous Fijians and 50 per cent to students of other races, and other scholarships are provided to Fijian students through the Fijian Affairs Board. The policy is to also distribute scholarships equally by gender but in practice this depends on the types of courses available and the number of suitable applicants. Students allocated scholarships are bonded to work in Fiji on completion of their studies, with the length of the contract being equal to the years of

study. Other scholarships are funded by community groups, foreign aid organizations and corporate bodies, and these scholarships have their own criteria for selection.

214. Professional courses in teaching, nursing and other diploma-level courses are provided at the Fiji College of Advanced Education, the Fiji Institute of Technology, Lautoka Teachers' College, the Fiji School of Nursing, the Fiji School of Medicine, the Fiji College of Agriculture, and the Fiji School of Hotel Management. Most places at these institutions are linked to designated civil service positions at completing of the course but increasingly also cater for private sector needs. As well as the Government-run teacher training colleges, two private teacher training institutions - Corpus Chisti and Fulton College - offer three-year programmes. The School of Humanities at the University of the South Pacific also offers teacher training courses with Bachelor and Master of Education degree programmes. Demand for places at tertiary institutions is very high and there are limited places available.

3. Future implementation

215. Policy planning in education is an ongoing process, for policies are regularly evaluated and modified to meet the changing needs of students, teachers and the community.

216. Planned changes to education services include:

(a) Providing transport subsidies to students, including providing punts and engines to schools where pupils travel to school by water;

(b) Improving special education services by increasing the number of trained teachers, upgrading teachers' skills in working with children with special needs, and generally providing more resources. Currently, training for special education is only provided in a one-semester course for second-year trainee teachers at Lautoka Teachers' College;

(c) Because of geographic constraints, Form 7 (matriculation) classes are to be further centralized. At present only 2,500 students in 45 secondary schools and the USP foundation year attend Form 7. Many of the students board and most receive government scholarships of between $200 and $500 a year to cover boarding costs. Fees for the USP course are $1,500 a year;

(d) Encouraging schools to offer a wider selection of vocational education courses for students after Form 4;

(e) Upgrading the teaching of science and mathematics in schools so that students can better meet modern working requirements;

(f) Encouraging schools to accept the responsibility of educating the community by providing non-formal, community-based programmes, such as on work options, holiday and leisure activities, and opportunities for parents to participate in their child's education;

(g) Encouraging teachers to further their qualifications through higher education studies, such as through USP Extension Services, by releasing them on a part-time basis and reimbursing 50 per cent of their fees upon their successful completion of the course; and

(h) Providing junior secondary teacher training through the Fiji College of Advanced Education.

217. Policies that have been devised or implemented in 1995 include:

(a) Proposed curricula reforms to incorporate morals, ethics, and values into school programmes. Emphasis will be given to universal mores and their adaptation to Fijian culture;

(b) Providing in-service courses to upgrade the teaching skills of teachers of Classes 7 and 8 in English, mathematics, science and social science. This will bring these teachers to the same level of competency as Forms 1 and 2 teachers, for the curriculum of these classes is identical;

(c) Upgrading teaching skills for Classes 7 and 8 teachers; and

(d) Further improving teacher education.

218. Policies that have been approved for implementation in 1996 are:

(a) A new regulation on compulsory education aims to provide 100 per cent access for children aged 6 to 15 years to primary schools and to guarantee legal attendance at school;

(b) Appointing counsellors and guidance teachers in secondary schools, initially by releasing teachers half-time to fulfil this role and providing them further training; and

(c) The Ministry of Education is negotiating incentives to encourage teachers and their families to take up rural postings.

219. Policies that have been proposed and are being negotiated for implementation include:

(a) Structuring a hierarchy of teacher levels of responsibility in primary schools with corresponding financial incentives for teachers who have supervisory responsibilities;

(b) Providing salary grants to pre-school teachers and establishing more pre-school centres;

(c) Reducing the number of compulsory external examinations; and

(d) Upgrading primary teacher training from certificate to diploma level.

4. Constraints

220. Implementation of these policies is hampered by the limited financial resources available, the geographical dispersion of schools, the limited

training expertise and in-service facilities for teachers, poor communication systems, and a general shortage of resources and staffing. Yet, despite the Government being under tight financial restraint, the Ministry of Education, Women, Culture, Science and Technology is one of very few ministries that has had progressive budget increases in recent years. Education accounts for about 20 per cent of government expenditure.

221. Other problems stem from the isolation of some communities that is exacerbated by poor communication and transport, and high costs of electricity and other supplies. Many schools lack telephones or electricity without which they cannot use many of the tools now considered essential to education, such as video equipment and photocopiers. Moreover, lack of adequate lighting at home limits the opportunities for students to work in the evenings. The Ministry of Education has provided funds and grants for generators for some such disadvantaged schools, but their maintenance has proven difficult.

222. Overall, good working and salary conditions assist the retention of qualified and experienced teachers. Secondary schools nevertheless have particular difficulty in retaining qualified teachers in science, mathematics, commerce, and business studies.

B. Aims of education

1. Legal context

223. The Minister for Education directs schools to educate and train school-aged children (that is, children aged from 5½ to 16 years for primary school and from 15 to 19 years for secondary school) to enable them to attain a basic education while preparing them for a responsible life in a free society. A child must turn 6 years old before 30 June in the year he or she begins school.

224. The national eduction system in Fiji aims to meet the changing needs of the community and the economy. Specific goals are:

(a) To increase access to education especially for rural children and the urban poor;

(b) To retain the strengths inherent in a high level of community participation in the education system while improving efficiency through more effective allocation of resources;

(c) To develop vocational and technical education to cater for market demand;

(d) To improve the quality of teaching by providing schools with qualified teachers and teaching materials;

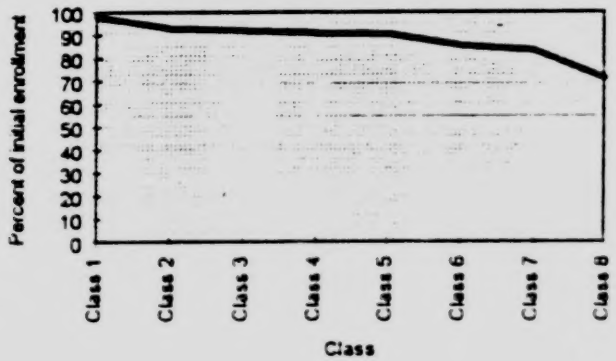
(e) To increase the participation and performance of indigenous Fijian students; and

(f) To encourage greater understanding of different cultures and to promote national unity.

2. Implementation

225. Primary school education is accessible to almost all children in Fiji and there is a high rate of primary school enrolment and attendance. Although primary education is tuition fee-free, approximately 2 per cent of children fail to enrol at Class 1 level and there is an increasing rate of children failing to enrol as the years proceed, particularly in the final two years.

Average primary school dropout rates, Fiji, 1990-1994



Source: Ministry of Education, 1995.

226. Secondary education is less accessible than primary education because of the higher costs involved, the geographic distribution of schools, and the inadequacy of the present system to meet the needs of students of all academic capabilities.

227. More investment in education and economic growth would provide more employment opportunities for school leavers.

C. Children with special needs

228. The Education Act provides for special schools for disabled children. Mainstream schools do not usually accept children with any form of disability, even if the disability is physical and not intellectual, because school buildings and facilities do not provide for disabled children. Most schools are not accessible to wheelchairs and there is no policy that requires new building or existing buildings to accommodate the needs of handicapped students. Recently, however, blind children have been accepted into some mainstream urban schools, with a visiting specialist teacher assisting their class teachers.

229. Special services for children with disabilities include the Early Intervention Centre in Suva and 15 special education schools, most of which are located in urban areas. These schools are run by voluntary organizations and staffed by the Ministry of Education. Altogether, 840 children are enrolled in these special schools but only the Blind School provides secondary education (via Braille). Other children seek admission into mainstream

secondary schools, where very few are accepted. Opportunities for the vocational training of disabled children beyond primary school are also very limited.

230. One of the first tasks of the recently formed Fiji Council of Disabled Persons is to conduct a national census on the size and characteristics of the disabled population in Fiji, including the number, location, and specific needs of disabled children. Progress on this survey has been hampered by funding constraints.

231. Practising classroom teachers do not have any special training to detect or diagnose children with learning and intellectual problems. Nor are there specialist teachers or counsellors available who have such skills. Indeed, there are far too few professional services available to identify and help children who have disabilities or special learning needs; too few speech therapists and no occupational therapists, psychologists or counsellors. One speech therapist is currently available to the Ministry of Education through the Volunteer Service Overseas programme, a contribution that is valuable but both temporary and inadequate to meet the need for this service. One VSO occupational therapist is similarly employed by the Ministry of Health, and the same limitations apply. The Ministry of Education recognizes the need for educational specialists in Fiji but is constrained from hiring because the Public Service Commission does not have such designated posts in the civil service.

232. There is a proposal under discussion to provide a training course at the University of the South Pacific in psychology and counselling for families.

D. Leisure, recreation and cultural activities

1. Legal context

233. Every child in Fiji has the right to leisure and to participate in cultural activities, games and sports in their free time and as part of their school programme.

2. Implementation

234. All children, including those of minority communities, are encouraged to participate in cultural activities and artistic activities both at home and at school, to practise their own religion, and to learn their own language. The situation regarding language and cultural education varies according to the student population, and according to the policy formulated by each school. Where schools are exclusively attended by Fijian or Indian students, all core subjects in Classes 1 and 2 are conducted in the vernacular language of the student with English being taught as a separate subject. From Class 3, all instruction is in English. In schools with a combination of races, all subjects are taught in English from Class 1.

235. Many primary and secondary schools offer classes in the vernacular as a separate subject. These include Fijian, Hindi, Chinese, Telgu, Tamil, Banaban, and Rotuman. Other languages taught at secondary schools and offered in major examinations include French, Japanese and Arabic. The Department intends to increase the number of languages at examination level. The Department provides special grants to schools for vernacular language

teachers, but the constraint on the teaching of vernacular languages is the limited number of qualified teachers available. Language and culture are not compulsory subjects of study but options that parents and teachers may exercise.

236. Physical education and sports are compulsory in the primary and secondary school curricula. All schools belong to national school organizations for specific sports, such as athletics, swimming, cricket, rugby unic:, netball, hockey, and volleyball. These sports organizations conduct inter-school sport competitions based on age-groupings. There is no racial nor sex discrimination in sports and children are free to play the sports of their choice. There are, nevertheless, sports that are normally played by either girls or boys, such as netball and rugby union. Many secondary school students are selected for national representation in international competitions, such as the South Pacific Games, a regional games for South Pacific nationals held every four years. A few students win selection at national level for the Olympic Games.

VIII. SPECIAL PROTECTION

A. Children in situations of civil emergency

237. Fiji is a party to the Geneva Conventions but not, as yet, to the Additional Protocols, a matter that the Fiji Red Cross is pursuing. Although there is no immediate concern about civil emergencies in Fiji, it is important to be prepared for any eventuality and, if necessary, to draft appropriate legislation and policies.

B. Children in conflict with the law

1. Legal context

238. The Juveniles Act provides for the administration of juvenile justice. The intentions behind this Act were to extricate children and young people from the adult court system, to provide a more sensitive approach to dealing with young offenders and to provide better general protection for children. The Act provides mechanisms and procedures for handling young people who commit crimes while keeping them away from more hardened adult offenders, and to ensure that these youth are incarcerated in a safe and nurturing environment.

2. Implementation

(a) The Juvenile Court

239. All children who offend under the age of 17 are regarded as juveniles and are dealt with in a Juvenile Court. This is sometimes a separate court, being then a Magistrate Court convened specifically to hear a charge against a juvenile or exercise any other jurisdiction conferred upon a Juvenile Court. Where possible, the magistrate does not use the main courtroom but convenes the Juvenile Court in another room. The Juvenile Court can dispose of all cases brought before it except murder or attempted murder, which must be heard in the High Court.

240. A juvenile may be represented by counsel. Where there is none, the parents or a responsible person in society, such as a religious minister, may appear for the juvenile. A State-appointed counsel is only available where the offence is murder or attempted murder. The parents or guardian of the juvenile must attend court once they are warned of the case, or face a court fine. The presence of a parent or relative is very important because they can assist the case. Once the charge is read and explained to the juvenile, a plea may be taken. Even though a juvenile may plead guilty, the court can still call witnesses to clarify the facts surrounding the case. All witnesses may be cross-examined and the defence may produce their own witnesses. The juvenile may be a witness himself in his defence, in which case he may be cross-examined by the prosecution. The juvenile may also make an unsworn statement. If the case is proven beyond reasonable doubt, the court will make a "finding of guilt" as a juvenile is never found guilty. He is also never "convicted" or "sentenced". Instead of being convicted, "an order made upon such a finding" (of guilt) is made. Where the Juvenile Court has made such a finding, it can dispose of the case in several ways, through:

(a) Discharge;

(b) An order to pay a fine, compensation or costs;

(c) An order to the parent or guardian to pay the fine, compensation or costs;

(d) An order that the parent or guardian gives security for the good behaviour of the juvenile;

(e) Making a care order;

(f) Making a probation order for a period of no longer than three years or past the seventeenth birthday of the probationer;

(g) If a young person, an order he be sent to a reform training centre;

(h) If a young person, an order of imprisonment up to two years; or

(i) Some other lawful way of dealing with the case.

241. Only a Resident Magistrate (First Class) can order a juvenile to a reform school or to prison. Before an order is made, a report must be made by experts, such as a psychologist, and by the Social Welfare Officer. This phase of the proceedings sometimes holds the case up unduly. No juvenile can be ordered to undergo corporal punishment. Remedies that the Juvenile Court can make are restricted to fining the parent or child; putting the child on probation or into the charge of the Director of Social Welfare; or imprisoning a young person for no more than two years. Court staff, however, have no special training in youth matters or in the procedures prescribed in the Juveniles Act.

242. The Juvenile Court also has jurisdiction to make orders for the juvenile where he is in need of care, protection or control even though he has not

committed an offence. This aspect of the jurisdiction is specifically related to the social welfare ways of solving the problem, and is ancillary to the administration of the juvenile justice system.

243. At all stages in the investigation and adjudication of a case involving a juvenile, the media are prohibited from publishing any material that identifies him or her.

(b) Rehabilitation

244. There are two reformatory-type centres in Suva, one for boys and one for girls. The first is operated by the Department of Social Welfare and the second is operated on a contractual basis by the Salvation Army on behalf of the Department. They provide minimum incarceration and young people can attend work or training outside of these institutions. There is no juvenile prison; when the need arises the Minister for Home Affairs can designate a facility for this purpose but usually juveniles are segregated within adult minimum security prisons. Those on probation are allocated a probation officer and, if need be, a medical practitioner, for not more than 12 months. The probation order may be reviewed by the court from time to time.

245. Where a juvenile is found guilty of murder, attempted murder, manslaughter, or wounding with intent to cause grievous bodily harm, and the court decides other measures are not suitable, then the Minister for Justice may direct the court's order. This could include the lengthening of the sentence beyond two years or placement in high-security facilities.

3. Future implementation

246. The Government and judiciary are now reviewing the execution of the Juvenile Act to ensure that the actions of the police, courts, and social welfare agencies reflect the Act's provisions to meet children's special needs. Overall, there is a need to improve children's and juveniles' access to legal representation, particularly when they are in care.

247. Among the recommendations of the Legal Subcommittee that were accepted by the Beattie Commission are that:

(a) Children and young persons who are offenders should be dealt with in the Family Court sitting in its ancillary jurisdiction as a Youth Court;

(b) The use of the term "juveniles" in both statutory and general language should cease;

(c) All the protection for children and young persons under the Juveniles Act should be retained in a new act that further provides special treatment for young offenders;

(d) The legislation for and operations of the Family Court sitting in its Youth Court jurisdiction should be modelled on the New Zealand Youth Court;

(e) Prosecution and conviction of young offenders should be a last resort;

(f) The "family conference" and the diversion programme should be the primary mechanisms to deal with young offenders, subject to police power to veto family conference recommendations or the court not accepting them;

(g) The family conference should provide the means to enable children and young persons to face their victim(s) and accept responsibility for their own wrongdoing;

(h) A new Police Youth Aid Section should replace the Police Juveniles Bureau and be fully committed to the philosophy of the proposed new legislation;

(i) Imaginative treatment and sentencing options should be considered for children and young persons who offend;

(j) Legislation providing for courtroom screening when children and young persons are complainants or giving evidence (modelled on New Zealand or Australian legislation) should be introduced immediately;

(k) The legal requirement for corroboration of the evidence of children and young persons should be abolished; and

(l) The Family Court Working Party should consider Australian and New Zealand legislation that allows for closed-circuit televisions to be used in the taking of evidence of children complainants, if resources permit its introduction in Fiji.

C. Children deprived of freedom

1. Legal context

248. Police procedures for dealing with children who are in custody is that bail must be granted unless the charge is murder or another grave crime, it is necessary in the interest of such a person to remove him or her from association with undesirable persons; or the police have reason to believe that if the person was released it would defeat the ends of justice.

249. The goals of the institutions operated by the Department of Social Welfare and the Salvation Army for boy and girl offenders are to:

(a) Provide a home where love and care are given;

(b) Provide opportunities for eduction and training that will enable the children to fit back into their community;

(c) Develop identifiable talents of the children;

(d) Enhance and facilitate further personal development that increases the children's chances of leading fuller, satisfying lives.

250. The prosecution of all criminal cases, whether juvenile or adult, is the responsibility of the Director of Public Prosecutions who can call for files of cases prosecuted by the police and take over the case.

251. The fingerprints or photographs of a child in custody cannot be taken unless ordered by a magistrate.

2. Implementation

252. The land for a new Juvenile Rehabilitation Centre has just been acquired. This centre will cater for boys and girls aged between 13 and 17 who are placed under the care of the Director of Social Welfare, including juveniles who are on temporary placement, boarded out, or otherwise bound to attend daily by court orders. The new Juvenile Centre is expected to provide vocational training programmes, adult education courses, remedial classes, workshops and seminars for juveniles and their parents, and counselling services.

253. The Statistical Annex and the figure below contain 1992 national figures for offences by juveniles. The lowest incidence of juvenile crime was in eastern Fiji, an area that is entirely rural. The highest number were committed in the vicinity of the two largest urban centres, Suva and Lautoka, a fact that is related to the concentration of people there. Almost half of all offences are committed in Suva, and around 30 per cent are committed in Lautoka.

Juvenile crime, by police divisions, 1992

Source: Police Department, 1996.

254. Once an offence is committed and reported to the police, the case is transferred to the Juvenile Bureau, a special unit within the Police Department. The Bureau investigates the offence and the background of the child. A senior inspector will decide to either prosecute the case or to drop charges. In the latter case, the juvenile is reprimanded and the parents are reminded of their social obligations. About 60 per cent of cases do not go past the Bureau and the level of recidivism for these young people is low, around 6 per cent.

255. Where the offence is serious - that is, murder, attempted murder, manslaughter, attempted manslaughter, or aggravated assault causing bodily harm - the case is passed on to the Director of Public Prosecutions. Whenever a case is tried or goes on appeal to the High Court, only public prosecutors will appear and all juvenile cases can be held in chambers on application. Other cases are usually prosecuted by police prosecutors at the Juvenile Court, although public prosecutors also have a right of audience in the Juvenile Court.

256. Where a juvenile has not committed an offence but is unruly or uncontrollable, or for some other reason is in need of care and protection, a social welfare or police officer can request the Juvenile Court that the juvenile be placed under the care of the Director of Social Welfare.

257. A juvenile is nearly always released on bail once arrested. When the offence is serious and he or she does not gain bail, the juvenile must appear in court at the earliest opportunity and a remand in custody order is made by the court. This order must be renewed every 21 days. While in remand, the juvenile must be segregated from adult offenders and if the accused is female, she must be in the custody of a female officer.

D. Exploited children

1. Child labour

(a) Legal context

258. The Employment Act sets minimum ages for employment, with children defined as being aged less than 15 years and the employment of children aged less than 12 years prohibited. Children aged between 12 and 15 years cannot work under harsh working conditions or where there are long hours, night work, or hard or heavy work.

(b) Implementation

259. There are no statistics produced in Fiji about children in formal and informal employment. While the Employment Law prohibits a child under 12 years from being employed, there is no enforcement either written into the legislation or carried out by any authority. While there are no obvious large-scale breaches of these employment laws and the incidence of children in paid employment appears to be low, there is concern that economic and other pressures on families are encouraging children to drop out of school and to look for casual employment in the informal sector.

260. The use of children for household chores is a traditional part of a child's upbringing and children - particularly those who have dropped out of the education system - contribute to family welfare, caring for other family members, cooking, cleaning, fetching firewood and water, tending livestock, planting crops, fishing, and so on.

2. Sexual exploitation and abuse of children

(a) Legal context

261. Existing legislation broadly protects children from sexual exploitation. The Juveniles Act empowers the Department of Social Welfare and the police to detain, remove, search for, or place in safety any child abused, neglected, or ill-treated. The Department of Social Welfare thereby has powers and duties to protect children, including that of taking children into care.

262. Children have the same protection as adults under normal assault laws. Under the Criminal Procedure Code "Offences against Morality", there are a number of offences forbidding sexual exploitation of females generally and of girls and minors. Section 157 states it is illegal to procure or attempt to

procure a woman or a girl under the age of 21 years for prostitution. This includes attempting to get a girl to leave her place of abode or leave Fiji for the purpose of entering a brothel. Section 162 states it is an offence for parents or custodians to sell or hire a minor under 16 years for prostitution or sexual intercourse. It is also an offence to buy or hire a minor for the purpose of prostitution or sexual intercourse. These offences are in addition to those of rape, indirect assault, defilement, incest, unnatural offences, or indecent practices between males.

263. The Juveniles Act stipulates that ill-treating, neglecting, abandoning, and exposing a juvenile to suffering and injury to health carries a sentence of $400 and/or two years' imprisonment. The Act further permits a magistrate to issue a warrant to police to search for a child where there is reasonable cause to suspect a child has been assaulted, ill-treated, neglected, or had any other offence committed against him or her. This warrant extends to entry by force if necessary.

(b) Implementation

264. In recent years there has been an increase in reported crimes against children. Police statistics show an increase of 77 per cent in the offence of defilement of children under the age of 16 from 1992 to 1993. As public awareness increases, there are more and more criminal cases involving children being presented before the courts because more such offences are reported.

265. At present a child who is a victim of abuse is required to give a statement at a police station. The statement is frequently taken in a room open to the public (usually the chargeroom) and there are no special procedures in place for taking a statement from a child. The child is then taken to a doctor at the nearest hospital for medical examination. There are very few female police officers in the Crime Branch of the police force, and child abuse cases are usually investigated by male officers with no particular training in child abuse. In the Suva area this problem is being addressed by the establishment of a special unit in the Police Department. This service does not extend to the other areas.

266. There is no legal requirement for any person or profession, including police, teachers, doctors, or health personnel, to report suspected child abuse, and while the Department of Social Welfare has responsibilities to protect children there is no organization officially identified to receive such reports.

267. There is no legislation that explains the actions to be taken against, or to deal with paedophiles, such as in their punishment or treatment.

268. It is recognized that there needs to be a complete overhaul of the Criminal Code and this is presently under review by the Family Law Committee and the Law Reform Commission.

269. The Juveniles Act (sect. 9) already provides that hearings involving the evidence of children should be held in camera while the child is giving evidence. The child may be given the additional protection of the option of screening within the courtroom to protect the victim from intimidating eye contact with the accused.

(c) Future implementation

270. Police procedures for dealing with cases of child abuse need to be changed to make reporting an alleged crime easier for a child. The Child Welfare Unit of the Department of Social Welfare should be notified as soon as the report is made.

271. The Police Department's Sexual Offences and Child Abuse Unit was established in 1995 following a three-week Sexual Offences and Child Protection Training Course. The Unit is temporarily based at Police Headquarters in Suva but it is planned to have its own premises equipped with separate rooms for medical examinations and interviews. The premises are anticipated to be ready by early 1996. A grant-in-aid through the British Embassy is expected to equip the Unit with furniture, computers, recording equipment, toys and aids to assist with interviewing young children. Once premises are ready, the Unit will be staffed with four police officers, some of whom will be women.

272. A recommendation of the Beattie Commission was that provision be made to take a child's evidence by way of closed circuit television. Despite the use of screens many children still find the courtroom intimidating, and a very young child may never be able to stand in the witness box and survive examination-in-chief and cross-examination. Implementation of this recommendation will probably depend on the costs involved.

273. Past prosecutions of child molestation and the rape of children as young as three have only succeeded either because there were eye-witnesses or because the accused confessed and pleaded guilty. The system of taking evidence does not take into account the special difficulties of children who are victims of crime, such as their inability to communicate in the same way as adults, and the legal need for corroboration. The Beattie Commission recommended that the corroboration rule be abolished and replaced by judicial discretion, as some other jurisdictions have done. Statutory change is also required to allow for a child's evidence to be taken in a room separate from the courtroom and in the company of a parent, guardian, or counsellor. Legislation could be designed along the lines of the Australian statute.

3. Drug abuse

(a) Legal context

274. Existing legislation prohibits drug abuse. The Government amended the Dangerous Drugs Act in 1990 to increase the penalties for the use, possession and trafficking of marijuana and other drugs, to include a mandatory three-month sentence for possession and a fine of up to $2,000, or imprisonment for up to 20 years, or both, for possession exceeding 400 g.

275. The Liquor Act prohibits the sale of alcohol to people under the age of 18 years.

(b) Implementation

276. Teenage alcohol abuse is commonplace in Fiji. Yet, as police records demonstrate, the Liquor Act is almost never enforced in regard to selling alcohol to under-age drinkers.

Alcohol-related offences in Fiji, 1987-1993

Type of offence	1987	1988	1989	1990	1991	1992	1993
Drunk, disorderly, incapable, etc.	1 144	1 029	1 148	844	688	480	749
Supplying liquor without a licence	53	37	34	53	43	46	75
Supplying liquor to persons under 18	2	0	0	0	4	1	0

Source: Fiji Police Force, 1993, in Adinkrah, 1995.

277. Drug abuse, particularly marijuana and especially among secondary school students, is rising steadily as local supply grows. Police statistics show a rise in arrests for marijuana possession, from 8 persons in 1983, to 123 in 1986 and to 199 in 1988. The growing of marijuana is now a lucrative business with an estimated street price (in June 1989) of $4,000 per kilo. There is no identifiable problem with hard drugs such as heroin, cocaine, or designer drugs. The majority of people arrested for drug offences are young men aged 17 to 24 years.

278. The drug abuse problem in Fiji lies not only in the use of dangerous or illegal drugs but also in the increased abuse of alcohol and yaqona. Both lead to a variety of crimes with consequential effects on silent victims, the family. It is the young and the underprivileged who most often are the victims of substance abuse. When children use dangerous drugs, they suffer serious health consequences. For example, young people aged 16 to 25 who frequently use marijuana or methylated spirits are often patients at St. Giles Mental Hospital. Children are also affected when parents indulge in excessive consumption of beer, tobacco and yaqona, for this taxes the meagre financial resources of families and deprives children of such necessities as school fees, medical care, and adequate accommodation.

279. Statistics collected by the 1993 National Nutrition Survey and the Department of Statistics show that consumption of tobacco and alcohol is growing in Fiji, with highest consumption by men aged 18 to 34 years. Alcoholic drinks and tobacco account for around 6 per cent of the average household spending in Fiji, a figure that is probably higher in urban areas.

Average family budget in Fiji, 1985 and 1991

Budget item	1985	1991
Food	33.9	35.4
Alcohol and tobacco	6.4	6.1
Housing	18.6	16.5
Heating and lighting	4.9	4.9
Durable goods	7.6	6.5
Clothing and footwear	6.3	5.4
Transport	11.3	12.8
Services	6.7	7.6
Miscellaneous	4.3	4.8
Total	100	100

Source: Bureau of Statistics, in Adinkrah 1995.

280. The Ministry of Education has introduced drug abuse training programmes for senior secondary school students. Some NGOs and religious groups provide counselling to individuals and families and are increasing public awareness about substance abuse. Some local committees have also been formed to combat these problems.

281. Public education about substance abuse needs active support. Children out of school and on the streets are at high risk and should be the targets for programmes designed to change attitudes and behaviours. Religious organizations should organize their moral and spiritual programmes in a creative way to attract young people.

E. Children belonging to a minority or indigenous group

1. Legal context

282. Along with its protection of basic freedoms and protections for all, the Fiji Constitution includes special reference to the rights of indigenous Fijians to their lands and resources and rights to "govern themselves for their own advancement and welfare". Moreover, section 18 of the Constitution provides for the enacting of a law or programmes or activities to ameliorate conditions that disadvantage individuals and groups, particularly those caused by race, sex, place of origin, political opinions, colour, religion or creed. Fijians are the indigenous inhabitants of Fiji and the Fijian population constitutes around 50 per cent of the national population.

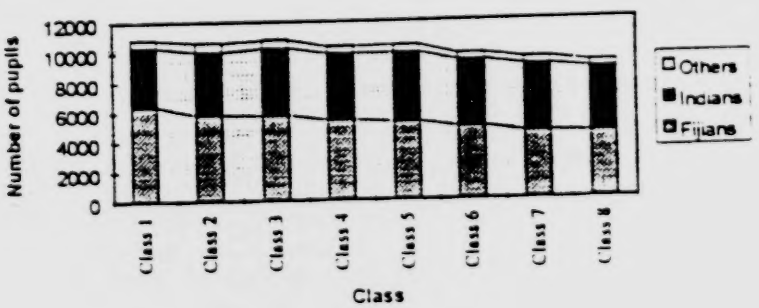
283. The Constitutional Review will consider the need, or otherwise, for further special measures to safeguard the particular interests of Fijians and other ethnic groups.

2. Implementation

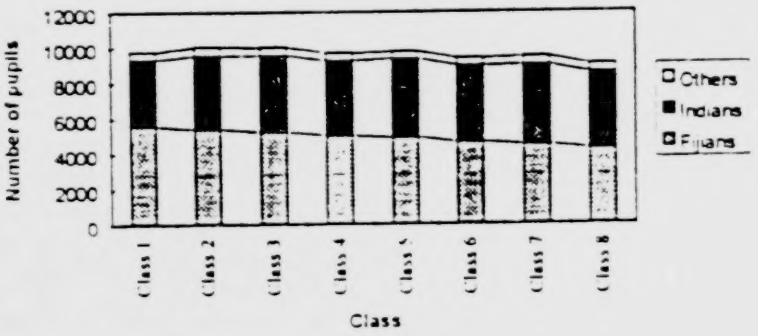
284. Disadvantage is generally considered in Fiji to lie along ethnic lines and to particularly refer to people of Fijian and other islander ethnicity: other islanders including people of Solomon Island, Banaban, ni-Vanuatu, and Wallis-Futuna descent. Most official statistics in Fiji are defined by ethnicity and there is little information as to other possible patterns of disadvantage, such as by income. The patterns of ethnic disadvantage are apparent in several ways, including educational achievement and in rates of imprisonment. The root causes of these patterns have not been well researched, particularly in that these problems have long been recognized and policies (perhaps ineffectual ones) have long been in place to address them.

285. For example, primary school enrolment figures suggest that Fijian children make up the largest proportion of primary school drop-outs, with the end of Class 5 marking the main drop-off point. (Information about other Pacific Islanders is subsumed in the "Others" category along with Chinese, Europeans and people of mixed ethnicity.) The relative sizes of beginning and final primary school classes provide a rough gauge of drop-out rates by ethnicity. In 1994, the numbers of Indian and Other boys in the final year primary school class was larger than in the initial class. There were, however, 30 per cent fewer Fijian boys in the final primary school class than there were in the initial class. Some of this difference can undoubtedly be attributed to differential fertility, with the Indian cohorts decreasing as Indian fertility continues to decline. Fijian fertility is also declining, however, if not as quickly, and the relative size of the initial and final classes should therefore be fairly equal. As it stands, the 31 per cent fewer Fijian boys in the final year primary class is some indication of the greater tendency of this group to drop out from school. Girls' enrolments show the same pattern, with slightly more Indian and Other girls in the final year class as in the first year class, but a 23 per cent decrease in the number of Fijian girls.

Male primary school enrolment, by class and ethnicity, Fiji, 1994

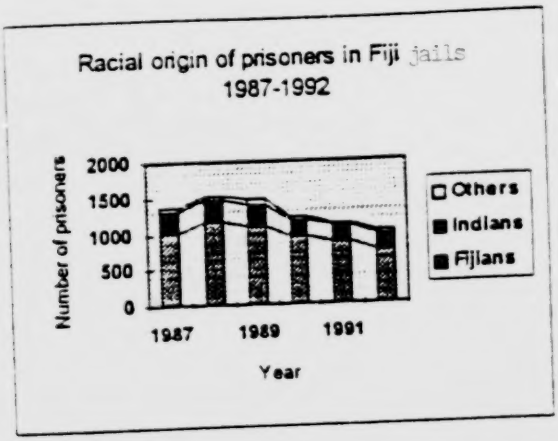


Female primary school enrolment, by class and ethnicity, Fiji, 1994



Source: Ministry of Education, 1995.

286. Young Fijian men make up the majority of the prison population. They are most often imprisoned because of crimes against property, their defaulting on payment of fines, and acts of violence, some of which are aggravated by alcohol. Fiji's prison population is overwhelmingly young, male, unemployed, working class or poor, and with little or no formal education (Adinkrah, 1995).



Source: Fiji Prison Service.

287. Adequate provision for access to social services (especially education) and business opportunities are thought to be key needs, and there are several schemes of affirmative action now being implemented. These include:

(a) Allocation of 50 per cent of government scholarships for tertiary education to indigenous Fijians, along with other scholarships provided through the Fijian Affairs Board;

(b) Lower cut-off marks to gain entry into the University of the South Pacific;

(c) Special training programmes in business preparation and management;

(d) Lower interest rates for loans at Government-operated banks and other special loan arrangements; and

(e) Reservation of 50 per cent of civil service jobs for indigenous Fijians.

IX. CONCLUSION

288. There has been a lot of will for change demonstrated and active collaboration initiated between child-related ministries. This has improved social consciousness about the status and, sometimes, the abuse of children. Fiji is, however, constrained by limited resources to implement all the changes that the CCC is promoting, and this includes a faster movement of the law reform process. The small budgets for the Departments of Social Welfare and Police do not help in this regard, nor do the great burdens that are placed on health services.

289. The ratification of the Convention on the Rights of the Child reflects our commitment to realizing its objectives. The Convention serves as an ideal tool for advocating, planning, implementing and evaluating programmes for the development, survival, and protection of Fiji's children, and for facilitating their participation in development programmes.

290. Most of our laws are already in harmony with the provisions of the Convention but more needs to be done to establish mechanisms to coordinate policies relating to children. As an initial step, each line ministry needs to identify those aspects of the Convention that come under its ambit of responsibility and to ensure that these are included in the formulation of its policies. The Fiji Government needs to commit itself fully to allocating adequate resources for the full implementation of the Convention. The role of the State, however, is to provide support to the family, for the family must remain, in Fiji, the child's primary caregiver since it is the institution that has traditionally protected children.

291. Emphasis therefore needs to be given to strengthening the family so it can provide for the needs of all family members - women, children, youth, men and grandparents - for the family is the very core of our society. There are indications of some breakdown of family bonds, apparently caused by social and economic changes and, in turn, contributing to social and economic degradation. The resurgence of appropriate parenting and child care can only be based on the stronger relationships within the family. Many Fiji children are fortunate in the strengthen of their extended family and the support they can look to, not only from their parents and siblings, but from their close involvement with their grandparents, aunts, uncles and cousins.

292. The selection therefore of the theme "The family, Fiji's hope" for the forthcoming national celebrations of Fiji's twenty-fifth year of independence is most appropriate and timely.